

NO. \_\_\_\_\_  
NO. 65123-4-I

SUPREME COURT  
OF THE STATE OF WASHINGTON

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WINNIE CHAN, AN INDIVIDUAL; ROBERT KENNAR, AN  
INDIVIDUAL; RAYMOND CARTER, AN INDIVIDUAL; GRAY  
PETERSON, AN INDIVIDUAL; GARY G. GOEDECKE, AN  
INDIVIDUAL,

Respondents,

THE SECOND AMENDMENT FOUNDATION, INC., A  
WASHINGTON NON-PROFIT CORPORATION; CITIZENS  
COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS, A  
WASHINGTON NON-PROFIT CORPORATION; WASHINGTON  
ARMS COLLECTORS, INC., A WASHINGTON NON-PROFIT  
CORPORATION; AND NATIONAL RIFLE ASSOCIATION OF  
AMERICA, INC., A NEW YORK NON-PROFIT ASSOCIATION,

Plaintiffs,

v.

CITY OF SEATTLE, A MUNICIPALITY; MICHAEL MCGINN,  
MAYOR OF THE CITY OF SEATTLE, IN HIS OFFICIAL CAPACITY;  
SEATTLE DEPARTMENT OF PARKS AND RECREATION, A  
DEPARTMENT OF THE CITY OF SEATTLE; and CHRISTOPHER  
WILLIAMS, ACTING SUPERINTENDENT, IN HIS OFFICIAL  
CAPACITY,

Appellants.

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PETITION FOR REVIEW  
OF DECISION OF COURT OF APPEALS

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## TABLE OF CONTENTS

	Page
I. IDENTITY OF PETITIONER.....	1
II. COURT OF APPEALS DECISION.....	1
III. ISSUE PRESENTED FOR REVIEW .....	1
IV. STATEMENT OF THE CASE.....	1
V. ARGUMENT.....	4
A. Standard for Discretionary Review.....	4
B. The Court of Appeals' Decision Conflicts with Supreme Court Authority Concerning the Scope of RCW 9.41.290. ....	5
1. The Supreme Court Has Twice Held That RCW 9.41.290 Does Not Restrict Local Authority Concerning Municipally Owned Property.....	5
2. The Court of Appeals Improperly Expanded the Definition of Criminal Regulation. ....	9
3. The Court of Appeals Eviscerated a Municipality's Ability to Exercise Its Rights as an Owner of Property. ....	11
C. Striking the Proper Balance Between Local Control of Public Parks and State Regulation of Firearms Is a Matter of Overriding Public Interest. ....	14
VI. CONCLUSION.....	19

## TABLE OF AUTHORITIES

**Page**

### CASES

<u>Adderley v. Florida</u> , 385 U.S. 39, 87 S. Ct. 242, 17 L. Ed. 2d 149 (1966).....	12
<u>Cherry v. Mun. of Metro. Seattle</u> , 114 Wn.2d 1026, 793 P.2d 976 (1990).....	15
<u>Cherry v. Mun. of Metro. Seattle</u> , 116 Wn.2d 794, 808 P.2d 746 (1991).....	<i>passim</i>
<u>City of Seattle v. Montana</u> , 129 Wn.2d 583, 919 P.2d 1218 (1996).....	16
<u>Pacific Nw. Shooting Park Ass’n v. City of Sequim</u> , 154 Wn.2d 1019, 120 P.3d 953 (2005).....	15, 16
<u>Pacific Nw. Shooting Park Ass’n v. City of Sequim</u> , 158 Wn.2d 342, 144 P.3d 276 (2006).....	<i>passim</i>
<u>Sanders v. City of Seattle</u> , 160 Wn.2d 198, 156 P.3d 874 (2007).....	12
<u>State v. Blair</u> , 65 Wn. App. 64, 827 P.2d 356 (1992).....	12
<u>State v. Morgan</u> , 78 Wn. App. 208, 896 P.2d 731 (1995).....	11
<u>State v. Olson</u> , 47 Wn. App. 514, 735 P.2d 1362 (1987).....	9

### STATUTES

RCW 9.41.290 .....	<i>passim</i>
RCW 9A.52.070.....	9
RCW 9A.52.080.....	9

## TABLE OF AUTHORITIES

	Page
RCW 35A.11.010.....	11
<b>OTHER AUTHORITIES</b>	
Final Bill Report, SSB 3782, 1983 .....	6
RAP 3.2(d) .....	1
RAP 13.4.....	4
RAP 13.4(b)(1) .....	5
RAP 13.4(b)(4) .....	5
Seattle City Charter, Article I, Section 1 .....	12
Wash. State Dept. of Health, <u>Fatal Injuries Washington State</u> (Apr. 25, 2011), <a href="http://www.doh.wa.gov/hsqa/emstrauma/injury/data_tables/WA/FatalxWA.pdf">http://www.doh.wa.gov/hsqa/emstrauma/ injury/data_tables/WA/FatalxWA.pdf</a> .....	16
Washington Ceasefire, <a href="http://www.washingtonceasefire.org">http://www.washingtonceasefire.org</a> (last visited Nov. 30, 2011).....	19

## **I. IDENTITY OF PETITIONER**

The Petitioners include the City of Seattle, Mayor Michael McGinn, the Seattle Department of Parks and Recreation (the “Parks Department”), and Christopher Williams<sup>1</sup> (collectively, the “City”).

## **II. COURT OF APPEALS DECISION**

The City requests that the Supreme Court review the decision of the Court of Appeals, Division I, in Chan v. City of Seattle, No. 65123-4-I, filed October 31, 2011, attached hereto at Appendix A.

## **III. ISSUE PRESENTED FOR REVIEW**

Whether a policy of the Parks Department that restricts carrying firearms as a condition of use of designated City parks facilities, but that carries no penalties and does not apply outside of the posted city-owned facilities, is a criminal “law or ordinance” regulating firearms that is preempted by RCW 9.41.290?<sup>2</sup>

## **IV. STATEMENT OF THE CASE**

This appeal presents an important question about the extent to which RCW 9.41.290 has usurped the right and authority of cities and

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<sup>1</sup> The caption in the trial court and the Court of Appeals named Timothy A. Gallagher, Superintendent, in his official capacity. However, Christopher Williams is now the Acting Superintendent of the Parks Department. The City intends to move to substitute Mr. Williams for Mr. Gallagher. In the interim, a successor party in interest may file a petition for review without waiting for substitution. RAP 3.2(d).

<sup>2</sup> This petition does not ask the Court to decide or interpret the scope of federal or state constitutional rights to bear arms.

counties to establish sensible policies and conditions for the safe use of the recreational facilities that they own. The City submits that RCW 9.41.290, in which the State occupies the field of “firearms regulation,” does not extend its reach beyond the exercise of traditional municipal police powers to intrude into that separate sphere where cities act in their distinct capacity as owners of property to set conditions for use of city-owned parks.

On October 14, 2009, the Parks Department enacted Rule/Policy Number P 060-8.14 (the “Parks Policy” or the “Policy”) to limit possession of firearms in designated areas of City-owned Parks Department facilities:

The Department, in its proprietary capacity as owner or manager of Department facilities, does not permit the carrying of concealed firearms or the display of firearms . . . at Parks Department facilities at which: 1) children and youth are likely to be present and, 2) appropriate signage has been posted to communicate to the public that firearms are not permitted at the facility.

CP 124 ¶ 4.0. The Parks Department found that in 2008, over 1.8 million people had visited and attended programs in Parks Department-owned community centers, pools, teen centers, and environmental learning centers. CP 121 ¶ 1.2. Tens of thousands of youths visit Parks Department facilities every year. Id. As the owner of these facilities, the Parks Department recognized that it has an interest in ensuring that the

facilities are safe and secure places for children to visit. Id. ¶¶ 1.3-1.4.

The Parks Department also found that families' safe and secure use of Parks Department-owned facilities is "disturbed by the threat of intentional or accidental discharges of firearms in the vicinity of children." Id. ¶ 1.6.

On October 28, 2009, Plaintiffs filed a complaint for declaratory and injunctive relief, claiming that the Parks Policy was preempted by RCW 9.41.290. CP 1-12. Respondents on appeal are individual plaintiffs who claim that they suffered harm because they were not permitted to bring firearms into certain Parks Department facilities and community centers. CP 8-10. At the hearing on Plaintiffs' Motion for Summary Judgment on February 12, 2010, the court held that the Parks Policy was preempted by RCW 9.41.290 and declared the Parks Policy null and void. The court also permanently enjoined the Parks Department from enforcing the Parks Policy. CP 272-73. The City timely appealed.

On appeal, all parties and the Court of Appeals agreed that the central issue to be determined on the question of preemption was whether the Parks Policy is a criminal regulation of firearms. Defendants argued that Plaintiffs would have to prove that the Parks Policy amounted to a "penal regulation of general application." Br. Appellant at 17. In response, Plaintiffs agreed that the Legislature intended for RCW 9.41.290



to advance uniformity in criminal firearms regulation, but argued that the Parks Policy is subject to preemption because it “carries a penal element.” Br. Resp’ts at 20.

On October 31, 2011, the Court of Appeals for Division I affirmed the trial court’s grant of summary judgment to Plaintiffs, and affirmed issuance of a permanent injunction against enforcement of the Parks Policy. App. A at 2. The court found that the City, through the Parks Policy, was attempting to “regulate the possession of firearms,” and held that the Parks Policy was preempted by RCW 9.41.290. Id. at 13. The court also found that the City was not acting as a “proprietor” in attempting to set conditions on use of certain Parks Department facilities, but instead was attempting to apply criminal regulations to the general public. Id. at 15-16. The court reasoned that the Parks Policy is a criminal regulation because there exists a possibility that a visitor who refuses to comply with the Parks Policy and subsequently refuses a request to depart from the facility for failure to comply with posted conditions of use could receive a trespass citation. Id. at 16-17. This petition followed.

## **V. ARGUMENT**

### **A. Standard for Discretionary Review**

The issues presented merit discretionary review pursuant to RAP 13.4 for two independent reasons. First, discretionary review should

be accepted under RAP 13.4(b)(1) because the decision by the Court of Appeals is inconsistent with this Court's previous decisions concerning the scope of RCW 9.41.290. Second, the issues are matters of substantial public interest warranting review under RAP 13.4(b)(4).

**B. The Court of Appeals' Decision Conflicts with Supreme Court Authority Concerning the Scope of RCW 9.41.290.**

**1. The Supreme Court Has Twice Held That RCW 9.41.290 Does Not Restrict Local Authority Concerning Municipally Owned Property.**

The Supreme Court has construed RCW 9.41.290 in two cases, and in both cases it held that local rules or use conditions limiting firearms were not preempted. The court construed RCW 9.41.290 to apply only to laws and ordinances of general application, but not to policies or conditions a city imposes on the permissive use of its own property that carry no criminal penalties. The Court of Appeals decision conflicts with the Supreme Court's decisions.

In Cherry v. Municipality of Metropolitan Seattle, 116 Wn.2d 794, 796, 808 P.2d 746 (1991), the Supreme Court held that Metro's policy prohibiting its employees from possessing concealed weapons while on duty or on Metro property was not preempted by RCW 9.41.290. Metro argued that its workplace rules were not "laws and ordinances" within the scope of the statute, and that Metro's rules did not constitute "firearms

regulation” within the scope of RCW 9.41.290. Id. at 800. The Supreme Court agreed. The Court found that in enacting and later amending the preemption statute, the Legislature sought “to reform that situation in which counties, cities, and towns could each enact conflicting local criminal codes regulating the general public’s possession of firearms.” Id. at 801 (emphasis added).<sup>3</sup> In this case, the Court of Appeals narrowly interpreted Cherry to be limited to “internal employment rules and policies for employee conduct . . . at the workplace.” App. A at 14. The Court of Appeals failed to heed Cherry’s broader teachings that RCW 9.41.290 was intended to preempt criminal firearms regulation, and did not extend to non-regulatory activities of local governments.

In Pacific Nw. Shooting Park Ass’n v. City of Sequim, 158 Wn.2d 342, 346, 144 P.3d 276 (2006), the plaintiffs applied for a permit to use the city’s convention center for a gun show. The Sequim Police Department appended several restrictions on sales of firearms at the convention center. Id. The permit-holder and a gun dealer sued, contending that the permit conditions were preempted by RCW 9.41.290. Id. at 345. In rejecting the preemption argument, the Supreme Court again

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<sup>3</sup> The Final Legislative Bill Report that includes RCW 9.41.290 confirms the Legislature’s focus on crimes, identifying ten “specified crimes of violence” that may result in the loss of a concealed pistol license, and devoting eleven paragraphs to criminal firearms laws. Final Bill Report, SSB 3782, 1983 sess. at 1-3 (attached hereto as App. B).

“found the penal nature of the Firearms Act . . . to be particularly significant.” Id. at 356 (citing Cherry, 116 Wn.2d at 800-01) (emphasis added). The court explained:

We note that the legislature placed the preemption clause in Title 9 of the Washington criminal code rather than in Title 35, which governs activities of cities and towns . . . . Although this placement is not conclusive of the legislature’s intent, it supports our analysis in Cherry regarding the penal focus of the preemption clause.

Id. at 356 n.6. The Supreme Court reaffirmed that “the central purpose of RCW 9A.02.020 was to eliminate conflicting municipal criminal codes and to ‘advance uniformity in criminal firearms regulation.’” Id. at 356 (quoting Cherry, 116 Wn.2d at 801). Here, the Court of Appeals erred when it held that the Parks Policy was preempted, notwithstanding the fact that it carries no criminal penalties.

The Court of Appeals also missed another tenet of this Court’s decisions in Cherry and Sequim—the distinction between a municipality’s exercise of its police powers in a regulatory context, and a municipality’s exercise of its own property rights, including the right to establish and enforce reasonable conditions of entry. In Sequim, the Supreme Court “construed the [preemption] clause to apply only to laws or regulations of general application.” Id. (emphasis added). The court distinguished between municipal “regulations of general application,” and restrictions to

protect a municipality's property interests. Id. at 356-57. The court then explained its earlier ruling, that "Cherry supports the general proposition that when a municipality acts in a capacity that is comparable to that of a private party, the preemption clause does not apply." Id. at 357 (emphasis added). Construing the statute and applying these basic principles, the court held:

The preemption clause does not prohibit a private property owner from imposing conditions on the sale of firearms on his or her property. Applying our reasoning in Cherry, it follows that a municipal property owner like a private property owner may impose conditions related to firearms for the use of its property in order to protect its property interests.

Id. (emphasis added) (citation omitted). This is exactly what the Parks Department has done here, but the Court of Appeals erroneously held otherwise.

In construing RCW 9.41.290, the Supreme Court has established clear principles to be applied here. First, both Cherry and Sequim hold that the Firearms Act is penal in nature, and that the preemption statute was intended to eliminate conflicting municipal criminal codes and to advance uniformity in criminal firearms regulation. Second, when a municipality acts as a property owner, it may restrict firearms as a condition of use of its own property. The Court of Appeals decision conflicts with these holdings. It also compounds the error with two

additional departures from well-settled precedent, discussed in the next two subsections.

**2. The Court of Appeals Improperly Expanded the Definition of Criminal Regulation.**

While acknowledging that the Supreme Court has construed RCW 9A.12.290 to preempt only criminal regulation of firearms, the Court of Appeals stretched the definition of criminal regulation beyond its proper legal foundations. The Court of Appeals held that the Parks Policy is a criminal regulation of firearms because, if a gun carrier's permission to enter a posted facility is revoked, then the refusal to comply with the condition of use might potentially lead to a citation for criminal trespass under RCW 9A.52.070-080. App. A at 16-17. This hyper-extended causal theory was an erroneous distortion of basic principles of property and criminal law.

Washington trespass statutes criminalize "entering and remaining upon premises when not licensed, invited, or privileged to enter or remain." State v. Olson, 47 Wn. App. 514, 517, 735 P.2d 1362 (1987); see also RCW 9A.52.070-080. Possessing a firearm, or violating a condition of use related to firearms, is not an element of the crime of trespass. Nor is it a crime under the Parks Policy. Indeed, the record below reflects that none of the Plaintiffs was ever cited for any criminal

violation when they willingly and knowingly entered (or avoided entering) posted premises while carrying firearms. CP 45, 54, 63, 71, 79-80.

The Court of Appeals ruling converts any policy or rule set as a condition of entry upon property—including rules of private landowners—into a “criminal regulation” via operation of the trespass statutes. An owner of private property may revoke a person’s permission to enter or remain on the owner’s property for any nondiscriminatory reason, but the possibility of an ensuing citation for criminal trespass for refusal to leave private property does not mean that the private property owner’s setting of conditions is itself “criminal regulation.” Yet, that is the essence of the Court of Appeals holding. Like the conditions that private property owners set, policies that condition entry onto or use of municipal property—such as rules against glass containers in parks, running on wet pool decks, wearing inappropriate clothing, or wearing hard soled shoes on gym floors—are not criminal regulations simply because failure to abide by the rule or policy might eventually, potentially, result in a criminal trespass citation.

No person could be criminally prosecuted or penalized for the “offense” of possessing or carrying a gun in a posted facility, against the Parks Policy. It necessarily follows that possessing or carrying a gun in designated facilities is not criminally regulated. The Parks Policy is not a

“criminal regulation” in any reasonable understanding of that phrase—it was not passed by ordinance and it carries no criminal penalties—and the Court of Appeals decision to the contrary should be reversed. The court’s “chain-of-events” causal reasoning sets no limiting principle on what could be construed as a criminal regulation, and should not be permitted to stand uncorrected lest it lead to unforeseen results in other cases.

**3. The Court of Appeals Eviscerated a Municipality’s Ability to Exercise Its Rights as an Owner of Property.**

In both Cherry and Sequim, the Supreme Court focused not on the persons affected, but on the nature of the city’s power and, in particular, whether it was acting in a capacity akin to a private business or property owner. The Court held that, “[a]pplying our reasoning in Cherry, it follows that a municipal property owner like a private property owner may impose conditions related to firearms for the use of its property in order to protect its property interests.” Sequim, 158 Wn.2d at 357 (emphasis added). Here, the Court of Appeals’ decision abrogated the City’s inherent power to establish conditions related to use of its property, and in so doing contravenes this Court’s precedent.

There is no legal question that the City has been granted the power to “control” its own real property. RCW 35A.11.010 (emphasis added). “A city . . . may control the use of its property,” including public parks,



“so long as the restriction is for a lawful nondiscriminatory purpose.” State v. Morgan, 78 Wn. App. 208, 211, 896 P.2d 731 (1995); State v. Blair, 65 Wn. App. 64, 67, 827 P.2d 356 (1992) (citing Adderley v. Florida, 385 U.S. 39, 47, 87 S. Ct. 242, 17 L. Ed. 2d 149 (1966)). The City’s charter vests the City with “all rights of property,” Seattle City Charter, Article I, Section 1, and this includes the right to establish and enforce reasonable conditions of entry. The Parks Policy is a lawful exercise of the City’s power to preserve facilities the City owns for the safe recreational and educational uses of children and youth, for which the facilities were intended. See Sanders v. City of Seattle, 160 Wn.2d 198, 210, 156 P.3d 874 (2007).

Although the court in Sequim does refer to “proprietary” activity in setting conditions for use of a convention center, it simply described the specific circumstance in that case that came within the penumbra of property rights and fell outside criminal regulation. The fundamental principle that eluded the Court of Appeals is that the ability to act in a so-called “proprietary” capacity—for example, by leasing municipal facilities to conventions, associations, and groups, in return for a fee—derives from municipalities’ inherent and broader rights to use and control property they own. In other words, ownership of property, and not the grant of police powers, is the source of the power to act in a “proprietary” capacity.

The power to lease city property is part of the “bundle” of property rights, which also includes the power to set conditions for use and to exclude persons who do not meet the conditions. What Cherry and Sequim recognize, then, is not just a narrowly defined category of “proprietary” actions that are not preempted, but a sphere of activity where municipalities order their own property and business affairs, akin to the actions of private businesses and property owners, that is not an exercise of the government’s police (regulatory) powers.

Moreover, limiting Sequim to “proprietary” activity would lead to irrational results. For example, a city could require that all facilities permits and leases contain conditions that prohibit any person from carrying a gun (as Seattle already does), but then guns would be allowed in all parks in situations not involving permits. Thus, when local sports league activities occur on City fields pursuant to permits, guns could be excluded in their permits, but guns must be permitted at pickup games and informal gatherings on those very same fields. Following this logic, the City of Seattle could grant a concession to a vendor to operate and manage all of its parks, and include as a contractual condition a rule that no guns be permitted anywhere in the parks, but it could not enforce its own policy to this effect so long as it directly operated the parks. These examples reveal the absurd results that would occur if the identification of a

“firearms regulation” turned on the presence or absence of a contract, lease, or permit. Cherry instructs that RCW 9.41.290 must be interpreted to avoid “unlikely, strained, or absurd results,” 116 Wn.2d at 802, and reversing the Court of Appeals here would avoid such results.

Finally, the opinion in Sequim holds that one touchstone for determining if something is a law or ordinance regulating firearms is whether it is of general application throughout the jurisdiction, or whether a city is merely exercising powers akin to those of a private property owner to establish conditions for entry to property it owns. 158 Wn.2d at 357. Under Cherry and Sequim, RCW 9.41.290 should be interpreted to maintain the equivalency between private and municipal powers to control conduct on one’s own property. The Court of Appeals’ decision is inconsistent with this guidance.

**C. Striking the Proper Balance Between Local Control of Public Parks and State Regulation of Firearms Is a Matter of Overriding Public Interest.**

This case rests at the intersection of two subjects of great public interest and controversy—parks and guns. City-owned parks and recreational facilities play a broad and important role in the life of city residents, especially children and youth, and maintaining safety and security in parks is an important mission of local governments. Matters affecting the creation, maintenance, regulation, and use of local parks are

of abiding public interest in the media, community relations, and ultimately, in political contests for office.

It is no less true that state regulation of firearms is a matter of strong public interest, as reflected in the vibrant public debate about how to strike a proper balance between individual gun rights and privileges, on the one hand, and public health and safety on the other. This petition asks the Court to decide a question of significant interest to many Washington citizens—whether the State’s intent to fully occupy the field of criminal firearms regulation abrogates the prerogatives of local governments throughout Washington to set conditions for the safe and secure use by visitors of parks properties that the local governments own.

Indeed, this Court has expressly acknowledged that substantial public interest when it previously granted discretionary review of cases concerning local governmental actions affecting sales or carrying of weapons on municipal property. For example, in Cherry, this Court accepted review of a petition that argued, in part, that significant media coverage, public comment, and the potential effect on every local government in the State made the reach of RCW 9.41.290 a matter of substantial public interest. 114 Wn.2d 1026, 793 P.2d 976 (1990) (granting petition for review). More recently, this Court accepted review in Sequim, examining the reach of RCW 9.41.290 with respect to a

municipality's property interests in a city-owned facility. 154 Wn.2d 1019, 120 P.3d 953 (2005) (granting petition for review). Furthermore, the Court has found that disputes at the intersection of weapons and public safety involve a substantial public interest. See, e.g., City of Seattle v. Montana, 129 Wn.2d 583, 592, 919 P.2d 1218 (1996) (holding that a section of the Seattle Municipal Code addressed to the threat posed by knives furthered a "substantial public interest in safety").

Additionally, the general problem of gun violence is highly publicized. In 2009, more people in Washington state were killed by guns than died in traffic accidents.<sup>4</sup> That an epidemic of gun violence has spilled into public and private spaces is beyond dispute, and is a matter of significant concern to people throughout the State.

The threat that firearms pose to public health and safety is also a matter of particularly intense concern to parents whose children use limited areas of City parks for a myriad of activities, from general recreation, to organized sports and athletic programs, to numerous educational and outreach programs. In enacting its Policy, the Parks Department recited some of the statistical evidence that justified this condition on use, beginning with the fact that 1.8 million children, youth, and adults visit its parks annually and use the limited parts of Parks

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<sup>4</sup> Wash. State Dept. of Health, Fatal Injuries Washington State (Apr. 25, 2011), [http://www.doh.wa.gov/hsqa/emstrauma/injury/data\\_tables/WA/FatalxWA.pdf](http://www.doh.wa.gov/hsqa/emstrauma/injury/data_tables/WA/FatalxWA.pdf).

Department facilities that would fall under the Parks Policy. CP 17. The City's parks host tens of thousands of competitive youth athletic events each year, and thousands of children and youth use Parks Department facilities for everything from swimming and biking to pick-up games of basketball, soccer, football, and numerous other activities. As the City found, "[c]arrying concealed firearms and displaying firearms at [Parks] Department facilities at which children and youth are likely to be present threatens the City's interests in promoting the use of those facilities by children, youth and their families." CP 121-122. That children and families feel safe and secure in their use of city parks is a matter of vital interest to the public and local government. Id.

In October 2009, the City issued the Parks Policy. In issuing the Parks Policy, the City engaged in a very public process that included submission by members of the public of over 1,000 written comments, as well as two public hearings. CP 18-19. In addition, the Parks Policy itself contains numerous findings concerning the public's interest in the City's ability to manage Parks Department facilities for the safety of visitors, including the more than 100,000 children and youth who visit those facilities each year. CP 17; App. A at 6 n.5. By the time the Parks Policy was adopted, the Policy had generated considerable public attention and

interest from parks visitors, legislators, state agencies, and others seeking to shape whatever policy might be adopted.

The public's interest in the ability of local governments to promote the public health and general safety of its citizens by limiting weapons in designated properties and facilities is manifest. The Court of Appeals traced the origins of the Parks Policy to a highly publicized incident in which two visitors to the Seattle Center were struck by gunfire from a man carrying a handgun with a concealed pistol license. App. A at 4; see also App. C at C-1 to C-2. In addition, the Mayor's 2008 Executive Order and passage of the Parks Policy were the subject of considerable news coverage. See App. C at C-3 to C-6. This case has itself been the subject of substantial coverage. See App. C at C-7 to C-9.

The Plaintiffs include several organizations whose members have broad interests in government regulation affecting gun rights and privileges. The National Rifle Association ("NRA") and the Second Amendment Foundation ("SAF"), among others, were plaintiffs in the trial court before they were dismissed for lack of standing. CP 273. Each alleges that it has "thousands" of members in the state of Washington. CP 3-4. SAF has published reports to its members about this case. See App. C at C-10 to C-12. Although this petition raises no issue requiring the Court to construe or interpret the scope of any constitutional right to carry

a gun, as alleged in the complaint, government actions that affect guns are of interest to the members of the plaintiff organizations. CP 10. On the other side of the debate, Washington Ceasefire has more than 5,000 members in the State devoted to public education and advocacy for safe gun policies and reducing gun violence. Washington Ceasefire, <http://www.washingtonceasefire.org> (last visited Nov. 30, 2011).

Another sign of the importance of this matter to the public is that members of the Legislature and the Attorney General have joined the public debate. The Attorney General responded to a request from several state legislators and issued an opinion concluding that RCW 9.41.290 preempts a city's authority to prohibit firearms on city property or in city-owned facilities. CP 26-36; App. A at 4-5; see also App. C at C-13 to C-14.

## **VI. CONCLUSION**

If the Legislature had intended to revoke the authority and power of local governments to set the conditions for the properties and facilities they owned it should have said so expressly, but RCW 9.41.290 does no such thing. The petition for review should be granted so that the Court can reverse those aspects of the decision of the Court of Appeals that conflict with the prior decisions of this Court in Cherry and Sequim, and because the issues concerning parks and guns raised in this petition are



matters of substantial public interest. On review, the City asks that the permanent injunction also be vacated.

DATED this 30th day of November, 2011.

Respectfully submitted,

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# APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WINNIE CHAN, an individual; ROBERT )  
KENNAR, an individual; RAYMOND )  
CARTER, an individual; GRAY )  
PETERSON, an individual; GARY G. )  
GOEDECKE, an individual, )

Respondents, )

THE SECOND AMENDMENT )  
FOUNDATION, INC., a Washington )  
non-profit corporation; CITIZENS )  
COMMITTEE FOR THE RIGHT TO )  
KEEP AND BEAR ARMS, a Washington )  
non-profit corporation; WASHINGTON )  
ARMS COLLECTORS, INC., a )  
Washington non-profit corporation; AND )  
NATIONAL RIFLE ASSOCIATION OF )  
AMERICA, INC., a New York non-profit )  
association, )

Plaintiffs, )

v. )

CITY OF SEATTLE, a municipality; )  
MICHAEL MCGINN, Mayor of the City )  
of Seattle, in his official capacity; )  
SEATTLE DEPARTMENT OF PARKS )  
AND RECREATION, a department of )  
the City of Seattle; and TIMOTHY A. )  
GALLAGHER, Superintendent, in his )  
official capacity, )

Appellants, )

No. 65123-4-I

DIVISION ONE

PUBLISHED OPINION

FILED: October 31, 2011

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2011 OCT 31 AM 11:31

GREGORY J. NICKELS, (former) )  
Mayor of the City of Seattle, in his )  
official capacity, )  
 )  
Defendant. )  
\_\_\_\_\_

SCHINDLER, J. — Except as authorized in RCW 9.41.290, the legislature expressly preempts municipalities from enacting firearm regulations prohibiting the possession of firearms. The City of Seattle appeals the trial court's determination that RCW 9.41.290 preempts the Seattle Department of Parks and Recreation from enacting a rule that prohibits the possession of firearms at designated city parks and park facilities open to the public. We affirm.

I

In 1935, the legislature adopted laws regulating the possession and use of firearms based on the uniform firearms act approved by the National Conference of Commissioners on Uniform State Laws and Proceedings. Laws of 1935, ch. 172; Cherry v. Mun. of Metro. Seattle, 116 Wn.2d 794, 800, 808 P.2d 746 (1991).<sup>1</sup>

In 1983, the legislature enacted chapter 9.41 RCW to prevent municipalities from adopting inconsistent laws and ordinances regulating firearms. Laws of 1983, ch. 232, § 12; Cherry, 116 Wn.2d at 801. Former RCW 9.41.290 provides, in pertinent part:

Cities, towns, and counties may enact only those laws and ordinances relating to firearms that are consistent with this chapter. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted.

Laws of 1983, ch. 232, § 12.

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<sup>1</sup> See also HANDBOOK OF NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS 562-67 (1930).

In 1985, the legislature amended former RCW 9.41.290 to preempt municipalities from regulating firearms. Laws of 1985, ch. 428, § 1. Former RCW 9.41.290 states:

The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law and are consistent with this chapter. Such local ordinances shall have the same or lesser penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

Laws of 1985, ch. 428, § 1. The legislature also adopted former RCW 9.41.300. Laws of 1985, ch. 428, § 2. Former RCW 9.41.300 prohibits the possession of firearms in certain places and expressly authorizes municipalities to restrict the discharge and possession of firearms. Former RCW 9.41.300(2) also states that "[n]otwithstanding RCW 9.41.290, cities, towns, counties, and other municipalities may enact laws and ordinances" restricting the possession and discharge of firearms in certain places. Laws of 1985, ch. 428, § 2(2).

In 1994, the legislature amended former RCW 9.41.290 and former RCW 9.41.300 to preempt municipalities from regulating the possession of firearms unless "specifically authorized by state law, as in RCW 9.41.300." Laws of 1994, 1st Spec. Sess., ch. 7, § 428. The legislature repealed the language, "Notwithstanding RCW

9.41.290", to make clear its intent to fully occupy and preempt municipalities from regulating firearm possession. Laws of 1994, 1st Spec. Sess., ch. 7, § 429(2).<sup>2</sup>

II

On June 6, 2008, the mayor of the City of Seattle issued an executive order directing departments to review "all rules, policies, and leases for all City of Seattle properties and amend such rules, policies, and leases in an effort to develop a 'gun-free' policy for City of Seattle properties."<sup>3</sup> The executive order states, in pertinent part:

WHEREAS, the Washington State Supreme Court has held that a municipal property owner, like a private property owner, may impose conditions related to firearms for the use of its property in order to protect its property interest; and

WHEREAS, the recent shooting involving a permitted handgun highlights the importance of having gun-free policies on City of Seattle property; and

. . . .

NOW, THEREFORE, I, GREGORY J. NICKELS, Seattle Mayor, declare that it is the policy of the City of Seattle, acting in its proprietary capacity, to adopt and enforce policies, rules, and contractual agreements that prohibit the possession of dangerous weapons, including firearms, and with the exception of guns issued to law enforcement personnel, on City property.

III

On October 13, the Washington State Attorney General issued a formal opinion (AGO) on the question of whether a city has "the authority to enact a local law that

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<sup>2</sup> The legislature also added a subsection that makes the penalties for violation of municipal ordinances as authorized under RCW 9.41.290 consistent with state law. Laws of 1994, 1st Spec. Sess., ch. 7, § 429(4).

<sup>3</sup> As originally filed in October 2009, the lawsuit named then-Mayor Gregory Nickels as one of the defendants. The current mayor is Mike McGinn. The parties have therefore substituted Mayor McGinn for Mayor Nickels.

prohibits possession of firearms on city property or in city-owned facilities." 2008 Op. Att'y Gen. No. 8, at 1.<sup>4</sup> In addressing the scope of the state's preemption of firearm regulation, the AGO analyzed the language of the statute, the legislative history, and case law, and concludes that RCW 9.41.290 preempts the authority of a city "to enact local laws that prohibit possession of firearms on city property or in city-owned facilities."

2008 Op. Att'y Gen. No. 8, at 1. The AGO states, in pertinent part:

To summarize, RCW 9.41.290 "fully occupies and preempts the entire field of firearms regulation" and preempts a city's authority to adopt firearms laws or regulations of application to the general public, unless specifically authorized by state law. Accordingly, RCW 9.41.290 preempts a city's authority to enact local laws that prohibit possession of firearms on city property or in city-owned facilities.

While RCW 9.41.290 does not preempt all city authority with regard to firearms, it does preempt a city's authority to adopt firearms laws or regulations of application to the general public, unless specifically authorized by state law. Accordingly, RCW 9.41.290 preempts a city's authority to enact local laws that prohibit possession of firearms on city property or in city-owned facilities.

2008 Op. Att'y Gen. No. 8, at 1 (quoting RCW 9.41.290), 11.

#### IV

On October 14, 2009, the City of Seattle Department of Parks and Recreation (Department) issued a "Rule/Policy" that prohibits the possession of firearms "as a Condition of Entry Into or Use of Designated Parks Department Facilities at Which

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<sup>4</sup> (Boldface omitted.)

Children and Youth are Likely to be Present” (the Firearms Rule).<sup>5</sup> The Firearms Rule provides, in pertinent part:

**4.0 GENERAL POLICY: CARRYING CONCEALED FIREARMS AND  
DISPLAYING FIREARMS ARE NOT PERMITTED AT PARKS  
DEPARTMENT FACILITIES AT WHICH CHILDREN AND YOUTH ARE  
LIKELY TO BE PRESENT**

The Department, in its proprietary capacity as owner or manager of Department facilities, does not permit the carrying of concealed firearms or the display of firearms, except by law enforcement officers and on-duty security officers, at Parks Department facilities at which: 1) children and youth are likely to be present and, 2) appropriate signage has been posted to communicate to the public that firearms are not permitted at the facility.

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<sup>5</sup> The Department sets forth a number of findings in support of the Firearms Rule. The findings state, in pertinent part:

**1.1** The City owns and operates various City real property and facilities, including property and facilities under the jurisdiction of the Seattle Parks and Recreation Department (“Parks” or “Department”).

**1.2** In 2008 over 1.8 million people visited and attended programs in Parks Department owned community centers, pools, teen centers and environmental learning centers; over 108,000 children and youth visited wading pools; over 59,000 youth events were scheduled at sports fields; and, countless numbers of children and youth visited playgrounds, play areas, and sports courts.

**1.3** As the owner and operator of Department facilities at which children and youth are likely to be present, the City has a strong interest in promoting facility users' and visitors' confidence, particularly families with children, that such facilities are safe and secure places to visit.

**1.4** Carrying concealed firearms and displaying firearms at Department facilities at which children and youth are likely to be present threatens the City's interests in promoting the use of those facilities by children, youth and their families.

**1.5** Based on the relatively small percentage of Seattle residents who have concealed weapons permits, we conclude that the vast majority of users of Department facilities where children and youth are present are families who do not carry firearms.



The Firearms Rule identifies designated park facilities subject to the Rule:

**5.0 DESIGNATED PARKS DEPARTMENT FACILITIES AT WHICH CHILDREN AND YOUTH ARE LIKELY TO BE PRESENT**

**5.1 Facilities at which children and youth are likely to be present.** The following Department facilities are designated as facilities where children and youth are likely to be present:

- 5.1.1** Playgrounds and Children's play areas;
- 5.1.2** Sports fields, Sports Courts and other sports facilities;
- 5.1.3** Swimming and Wading Pools;
- 5.1.4** Spray Parks (Water Play Areas);
- 5.1.5** Teen Centers;
- 5.1.6** Community Centers;
- 5.1.7** Environmental Learning Centers;
- 5.1.8** Small craft centers;
- 5.1.9** Performing Arts Centers;
- 5.1.10** Tennis Centers;
- 5.1.11** Skateboard Parks;
- 5.1.12** Golf Courses; and,
- 5.1.13** Swim beaches.

The Firearms Rule also addresses posting signs prohibiting possession of firearms at designated park facilities prohibiting possession of firearms. Section 5.2 provides:

The Superintendent may post at a Parks facility at which children and youth are likely to be present appropriate signage indicating to the public that firearms are not permitted at that facility.

Section 6.0, "Withdrawal of Permission to Remain at a Particular Designated Facility," states that the Firearms Rule does not include any "Criminal or Civil Penalties." However, Section 6.0 also states that violation of the Firearms Rule "shall be enforced in the same manner and pursuant to the same ordinances and statutes as similar conditions could be enforced by other public or private property owners." Section 6.0 of

the Firearms Rule states:

**6.0 WITHDRAWAL OF PERMISSION TO REMAIN AT A PARTICULAR DESIGNATED FACILITY**

**6.1 No Criminal or Civil Penalties.** This policy/rule does not include any criminal or civil penalties. Rather, it constitutes conditions placed upon a person's permission to enter or remain at a designated Parks Department facility at which appropriate signage has been posted. Such conditions shall be enforced in the same manner and pursuant to the same ordinances and statutes as similar conditions could be enforced by other public or private property owners.

**6.2 Withdrawal of Permission to Enter or Remain at the Designated Facility.** The following individuals have authority to withdraw in writing or orally a person's permission to enter or remain at a designated Parks Department facility:

**6.2.1** Sworn Seattle police officers; and,

**6.2.2** Other City employees or agents delegated such authority by the Superintendent.

On October 14, the mayor announced the adoption of the Firearms Rule. The press release states that "after signs are posted" notifying the public of the Firearms Rule, possession of firearms is prohibited at designated parks and park facilities. According to the press release, violators of the Firearms Rule are subject to citation or arrest for criminal trespass.

Anyone who enters one of the posted facilities with a gun will be asked by Parks personnel or Seattle police officers to leave the areas where firearms are prohibited. If they refuse to leave, they may be subject to citation or arrest for criminal trespass by Seattle police.

Winnie Chan, Robert Kennar, Raymond Carter, Gray Peterson, and Gary Goedecke filed a lawsuit challenging adoption of the Firearms Rule against the City of Seattle, City of Seattle Mayor Greg Nickels, the Department, and the superintendent of

~~the Department (collectively City) and seeking declaratory and injunctive relief.~~<sup>6</sup> There is no dispute that each of the plaintiffs possess a valid and current concealed pistol license and were prohibited from carrying a concealed firearm at designated city parks and park facilities.<sup>7</sup> The complaint alleges the state has the exclusive right to regulate possession of firearms and the City did not have the authority to prohibit the plaintiffs from carrying concealed firearms at park facilities open to the public. The plaintiffs requested an order preventing the City from enforcing the Firearms Rule and ordering the City to remove the signs prohibiting the public from carrying firearms at designated park facilities open to the public.

On cross motions for summary judgment, the court ruled that RCW 9.41.290 preempts the Firearms Rule.<sup>8</sup> The court entered an order declaring the Firearms Rule "null and void," ordered the City to remove all signs within 30 days, and awarded statutory attorneys' fees and costs to the plaintiffs. The City appeals.

V

The City contends RCW 9.41.290 does not preempt the Firearms Rule because (1) the City is acting in its proprietary capacity, (2) the Firearms Rule is not a criminal regulation, and (3) the Firearms Rule was not adopted as a law or ordinance.

Under article XI, section 11 of the Washington State Constitution, a city has the authority to "make and enforce within its limits all such local police, sanitary and other

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<sup>6</sup> The Second Amendment Foundation Inc.; Citizens Committee for the Right to Keep and Bear Arms; Washington Arms Collectors Inc.; and the National Rifle Association of America Inc. were also named as plaintiffs in the lawsuit. The trial court dismissed the organizations for lack of "standing to bring claims."

<sup>7</sup> For example, Chan carries a firearm while not on duty as a community corrections officer. Chan frequents several parks, as well as the Hiawatha Community Center to play tennis. After the Firearms Rule went into effect, the Department revoked permission for her to remain at the Hiawatha Community Center while carrying her firearm.

<sup>8</sup> The parties do not argue that the Firearms Rule violates the state or federal constitutions.

regulations as are not in conflict with general laws." A statute preempts regulation of "the same subject if the statute occupies the field." Lawson v. City of Pasco, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010). A statute preempts the field if the legislature expressly states its intent to do so or such intent is necessarily implied. Lawson, 168 Wn.2d at 679.

The meaning of a statute is a question of law. We review statutes and questions of law de novo. Berger v. Sonneland, 144 Wn.2d 91, 102-03, 26 P.3d 257 (2001). Our fundamental objective in construing a statute is to ascertain and give effect to legislative intent. Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). If the meaning of a statute is plain on its face, we must give effect to that plain meaning as the expression of what the legislature intended. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). A statute is ambiguous only if susceptible to two or more reasonable interpretations. Burton v. Lehman, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005).

Except as otherwise authorized, RCW 9.41.290 preempts firearms regulation.

RCW 9.41.290 states:

**State preemption.** The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

~~RCW 9.41.300 prohibits the possession of weapons in certain places, and~~  
explicitly authorizes municipalities to enact laws and ordinances that restrict the  
discharge of firearms, prohibit possession of firearms at a stadium or convention center  
owned by the city, and restricts the locations where firearms may be sold. RCW  
9.41.300 states, in pertinent part:

(1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon:

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court, except an order under chapter 13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

....  
The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

....  
(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

~~(i) Any pistol in the possession of a person licensed under RCW 9.41.070 or exempt from the licensing requirement by RCW 9.41.060; or~~

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3)(a) Cities, towns, and counties may enact ordinances restricting the areas in their respective jurisdictions in which firearms may be sold, but, except as provided in (b) of this subsection, a business selling firearms may not be treated more restrictively than other businesses located within the same zone. An ordinance requiring the cessation of business within a zone shall not have a shorter grandfather period for businesses selling firearms than for any other businesses within the zone.

(b) Cities, towns, and counties may restrict the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds, if the business has a storefront, has hours during which it is open for business, and posts advertisements or signs observable to passersby that firearms are available for sale. A business selling firearms that exists as of the date a restriction is enacted under this subsection (3)(b) shall be grandfathered according to existing law.

The plain language of RCW 9.41.290 preempts municipalities from enacting laws and ordinances regulating the possession of firearms. The statute states that the “state of Washington hereby fully occupies and preempts the entire field of firearm regulation within the boundaries of the state” and broadly defines firearms regulations to include registration, licensing, possession, purchase, sale, and discharge. RCW 9.41.290.<sup>9</sup> RCW 9.41.290 specifically addresses the limited authority of a municipality to regulate firearms. RCW 9.41.290 states, in pertinent part:

Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter.

RCW 9.41.290 also explicitly states that local laws that are “inconsistent with, more restrictive than, or exceed the requirements of state law” are “preempted and

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<sup>9</sup> (Emphasis added.)

~~repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality."~~

We hold that under the plain language of RCW 9.41.290 and RCW 9.41.300, the City's attempt to regulate the possession of firearms at designated park areas and park facilities open to the public by adopting the Firearms Rule is preempted by state law.

In an effort to avoid the effect of the state law preempting the possession and regulation of firearms, the City relies on two supreme court cases, Cherry and Pacific Northwest Shooting Park Ass'n v. City of Sequim (PNSPA), 158 Wn.2d 342, 144 P.3d 276 (2006), to argue that because it is acting in its proprietary capacity, RCW 9.41.290 does not apply. Neither Cherry nor PNSPA supports the argument that the City has the authority to regulate the possession of firearms at designated park areas and park facilities open to the public.

In Cherry, the court addressed whether RCW 9.41.290 preempts a municipal employer from adopting a policy prohibiting employees from carrying concealed weapons while on the job. Because the language of RCW 9.41.290 did not clearly "invalidate the authority of municipal employers to regulate or otherwise prohibit a municipal employee's possession of firearms while on the job," the court held that the statute "does not address internal employment rules limiting on-duty possession of firearms by public employees in the workplace." Cherry, 116 Wn.2d. at 798. After examining the legislative history, the court states that legislature enacted RCW 9.41.290:

[T]o reform that situation in which counties, cities, and towns could each enact conflicting local criminal codes regulating the general public's

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~~possession of firearms. . . . to eliminate a multiplicity of local laws relating to firearms and to advance uniformity in criminal firearms regulation.~~

Cherry, 116 Wn.2d. at 801. Because the legislature only intended to preempt firearm laws that applied "to the general public," the court concluded internal employment rules and policies for employee conduct limiting possession of firearms at the workplace are not preempted by RCW 9.41.290. Cherry, 116 Wn.2d. at 801.

In PNSPA, the Pacific Northwest Shooting Park Association applied for a temporary use permit to hold a gun show at the city's convention center. The city issued the permit with a number of conditions that prohibited unlicensed dealers from purchasing, acquiring, or selling firearms. PNSPA, 158 Wn.2d at 346-47. PNSPA sued the city alleging tortious interference with a contractual relationship and violation of RCW 9.41.290 and RCW 9.41.300 by imposing unauthorized conditions on gun sales by a private party. PNSPA, 158 Wn.2d at 347-48.

The court held that the city could impose the conditions because RCW 9.41.300(2)(b) expressly states that cities can restrict the possession of firearms in a convention center. PNSPA, 158 Wn.2d at 355.<sup>10</sup> The court also cited Cherry for "the general proposition that when a municipality acts in a capacity that is comparable to that of a private party, the preemption clause does not apply." PNSPA, 158 Wn.2d at 357.

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<sup>10</sup> The court rejected the argument that the gun show was a "showing, demonstration, or lecture involving the exhibition of firearms" under RCW 9.41.300(2)(b)(ii). PNSPA, 158 Wn.2d at 355 (emphasis and internal quotation marks omitted). RCW 9.41.300(2)(b)(ii) states:

(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

....  
(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

....  
(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.



~~The court states that a municipality acts in a proprietary capacity "when it acts as the~~  
proprietor of a business enterprise for the private advantage of the [municipality] and it  
may exercise its business powers in much the same way as a private individual or  
corporation." PNSPA, 158 Wn.2d at 357.<sup>11</sup> The court also concluded that RCW  
9.41.290 did not apply because the city was granting a temporary permit to use the city-  
owned convention center in PNSPA, and the city was "acting in its private capacity as a  
property owner." PNSPA, 158 Wn.2d at 357.

[RCW 9.41.290] does not prohibit a private property owner from imposing  
conditions on the sale of firearms on his or her property. RCW 9.41.290.  
Applying our reasoning in Cherry, it follows that a municipal property  
owner, like a private property owner, may impose conditions related to  
firearms for the use of its property in order to protect its property interests.  
For the same reason that a municipal employer may enact policies  
regarding possession of firearms in the workplace because a private  
employer may do so, a municipal property owner should be allowed to  
impose conditions related to sales of firearms on its property if a private  
property owner may impose them.

PNSPA, 158 Wn.2d at 357. However, in reaching the conclusion that the city was  
acting in its proprietary capacity by imposing conditions on the sales of firearms, the  
court emphasizes that "[t]he critical point is that the conditions the city imposed related  
to a permit for private use of its property. They were not laws or regulations of  
application to the general public." PNSPA, 158 Wn.2d at 357.<sup>12</sup>

Relying heavily on PNSPA, the City argues that because it is acting in its  
proprietary capacity, it has the authority to adopt the Firearms Rule. But here, unlike in  
PNSPA, RCW 9.41.300 does not allow the City to regulate firearms in parks and park  
facilities open to the public, and the City is not acting as " 'the proprietor of a business

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<sup>11</sup> (Alteration in original) (citations and internal quotation marks omitted.)

<sup>12</sup> (Emphasis added.)

~~enterprise' " for private advantage in adopting the Firearms Rule. PNSPA, 158 Wn.2d~~  
at 357 (quoting Hite v. Pub. Util. Dist. No. 2 of Grant County, 112 Wn.2d 456, 459, 772 P.2d 481 (1989)). The Firearms Rule regulates the possession of firearms at designated city parks and park facilities open to the general public.<sup>13</sup> PNSPA does not support the City's position that RCW 9.41.290 does not apply because it is acting as a property owner and setting conditions on use of its property. Except as authorized by the legislature, RCW 9.41.290 precludes a municipality from regulating the possession of firearms at city-owned park facilities open to the general public.

Next, the City argues that RCW 9.41.290 does not apply because the Firearms Rule is not a criminal firearms regulation. The City cites to the court's determination in Cherry that the intent of the legislature in adopting RCW 9.41.290 was to eliminate conflicting criminal firearm laws. The City also relies on the language of the Firearms Rule that states: "No Criminal or Civil Penalties. This policy/rule does not include any criminal or civil penalties."<sup>14</sup> Contrary to the City's argument, the press release issued at the same time the Firearms Rule was adopted also states that anyone who refuses to leave park facilities covered by the Rule "may be subject to citation or arrest for criminal trespass by Seattle police." Section 6.1 states that violation of the Firearms Rule "shall be enforced in the same manner and pursuant to the same ordinances and statutes as similar conditions could be enforced by other public or private property owners." The record shows that violation of the Firearms Rule would be enforced through trespass

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<sup>13</sup> According to the findings in the Firearms Rule, over 1.8 million people visited park facilities open to the public in 2008.

<sup>14</sup> (Boldface omitted.)

laws.<sup>15</sup> ~~The superintendant of the Department instructed employees to "call Seattle~~  
Police" if a person does not leave the facility after being notified that they are in violation  
of the Firearms Rule. In addition, the internal guidelines implementing the Firearms  
Rule state that "Seattle Police may use criminal trespass laws as appropriate."

The City also contends that RCW 9A.52.070 does not apply because the statute  
only precludes a municipality from adopting "laws and ordinances" regulating the  
possession of firearms, and not a rule or policy. But the City cites no support for the  
proposition that it can regulate the possession of firearms through rule or policy when it  
cannot do so by law or ordinance.

## VI

In the alternative, the City asserts the court erred in granting injunctive relief. We  
review the decision to grant injunctive relief on summary judgment de novo. Mains  
Farm Homeowners Ass'n v. Worthington, 121 Wn.2d 810, 813, 854 P.2d 1072 (1993).

To obtain injunctive relief, the plaintiffs had the burden of showing: (1) a clear  
legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and  
(3) that the acts complained of either result in or will result in actual and substantial  
injury. Tyler Pipe Indus., Inc. v. Dep't. of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213  
(1982). All three criteria must be met. Wash. Fed'n of State Emps., Council 28, AFL-

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<sup>15</sup> RCW 9A.52.070 governs first degree criminal trespass and provides:

(1) A person is guilty of criminal trespass in the first degree if he or she knowingly enters or  
remains unlawfully in a building.

(2) Criminal trespass in the first degree is a gross misdemeanor.

RCW 9A.52.080 governs second degree criminal trespass and provides:

(1) A person is guilty of criminal trespass in the second degree if he or she knowingly enters  
or remains unlawfully in or upon premises of another under circumstances not constituting  
criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor.

~~CIO v. State, 99 Wn.2d 878, 888, 665 P.2d 1337 (1983).~~ Because injunctive relief is equitable in nature, the criteria establishing injunctive relief should also include balancing the "relative interests of the parties and, if appropriate, the interests of the public." Tyler Pipe, 96 Wn.2d at 792.

The City argues the plaintiffs have not established either a clear legal right under RCW 9.41.290, or substantial injury. The City also argues the court did not balance the relative interests of the parties with the interests of the public. We disagree with the City.

There is no dispute that the plaintiffs possess valid concealed pistol permits. Unless otherwise prohibited by state law, a person with a valid permit is allowed to carry a concealed pistol "for the purposes of protection or while engaged in business, sport, or while traveling." RCW 9.41.070. There is also no dispute that the plaintiffs were not allowed to possess firearms at designated parks or park facilities open to the public. The record shows that the court took into consideration the express language of state law and the interests of the parties. The court is not required to take into account the interests of the public. Tyler Pipe, 96 Wn.2d at 792. The trial court did not err in entering an order granting injunctive relief by enjoining enforcement of the Firearms Rule and requiring the City to remove the signs prohibiting the public from possessing firearms at designated park facilities. See Ronken v. Bd. of County Comm'rs of Snohomish County, 89 Wn.2d 304, 311, 572 P.2d 1 (1977).

## VII

In sum, we hold that RCW 9.41.290 preempts the Firearms Rule. Except as expressly authorized by the legislature, municipalities are prohibited from regulating the

~~possession of firearms at city-owned park facilities open to the public. Whether to~~  
amend RCW 9.41.300 to prohibit possession of firearms at city-owned parks and park  
facilities frequented by children and youth is a question for the legislature to decide.

We affirm.

WE CONCUR:

Schindler, J.

Jan, J.

Gox, J.

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# APPENDIX B

FINAL LEGISLATIVE BILL REPORT

SSB 3782

BY Senate Committee on Judiciary (Originally sponsored by Senators Talmadge, McCaslin, Zimmerman, Rasmussen and Deccio)

Modifying provisions relating to firearms.

SENATE COMMITTEE on Judiciary

HOUSE COMMITTEE on Judiciary

SYNOPSIS AS ENACTED

BACKGROUND:

Persons who have been convicted of any of 10 specified crimes of violence are prohibited from possessing firearms.

A person must possess a concealed pistol license to carry a concealed pistol. The person may be denied a license if he or she has been convicted of any of the 10 specified crimes of violence, drug addiction, or habitual drunkenness or has been committed to a mental institution. The issuing authority is given 30 days to ascertain whether the individual is eligible for a permit. The fee for the two-year license is \$5 initially and \$3 for renewal. Habitual drunkenness and drug addiction are no longer part of the Criminal Code.

A person may not purchase a pistol if he or she has been convicted of any of the 10 specified crimes of violence, drug addiction, or habitual drunkenness, or is legally judged to be of unsound mind. Once an application for purchase has been made, the local law enforcement official has three days in which to determine whether the individual is eligible to possess a pistol.

If a person uses a firearm in violation of the law, the weapon is usually returned to the person after the criminal proceeding. If a person threatens someone else with violence, there is no specific authority for the court to keep someone's weapons temporarily.

The state and its political subdivisions may enact reasonable regulation of firearms in the exercise of its constitutional authority to legislate in furtherance of the public peace, health, safety, and welfare. A county, city, town, or township may not, however, make and enforce any regulation in conflict with general laws. In 1961, the Legislature preempted and repealed all laws inconsistent with the Firearms Act.

**SUMMARY:**

The criteria for prohibiting a person from possessing a firearm are altered. The list of crimes of violence is expanded to reflect the 1976 revision of the Criminal Code. In addition, persons convicted of certain felony violations of the Uniform Controlled Substances Act, or who have been committed for mental treatment, or who have been adjudged criminally insane, are ineligible to possess a firearm. Persons convicted of specified crimes who later complete probation and receive a dismissal may be eligible to possess a firearm. The Department of Social and Health Services and mental health care institutions are given authority to respond to inquiries establishing whether persons have been committed or adjudged criminally insane.

A concealed pistol license is valid for a four-year period, an increase of two years. The fees for the license are increased to \$20 for an initial license, and \$12 for a renewal. No other fees may be required. Renewal is permitted 90 days before or after the expiration date of the license. The period for the issuing authority to determine eligibility remains at 30 days for residents, but, if a person is new to this state, the issuing authority is given up to 60 days to determine eligibility. The issuing authority may issue an emergency concealed pistol license. Political subdivisions are prohibited from modifying these requirements; a civil action may be brought to enjoin wrongful refusal to issue a permit.

The restrictions on delivery of pistols are made applicable to commercial sales only. There is no waiting period for delivery of a pistol if the purchaser possesses a valid concealed pistol license or if the person has a sheriff's letter evidencing eligibility to possess a pistol. In other cases, the issuing authority is given five consecutive days to determine a resident's eligibility to purchase. The time period may be extended if a preliminary check turns up some indication that the person may be ineligible.

Forfeiture of certain firearms when other conditions exist is authorized. Such conditions include that the firearm was used in the commission of a crime, purchased or delivered in violation of the firearms chapter, used in violation of a written court order, or found on a person while under the influence of alcohol or mentally incompetent. Owners whose guns are subject to forfeiture may get them back if they show the gun was stolen or used without their knowledge or consent.

If the court orders a defendant in a domestic violence prosecution not to have any contact with the victim, it may also order the defendant to surrender temporarily his or her deadly weapon. When the court restrains a party to a dissolution proceeding from molesting or disturbing the peace of the other party or of any child, it may also require the party to surrender temporarily his or her deadly weapon.



A concealed pistol license will be revoked for three violations of the firearms chapter. A 25 percent penalty surcharge will be collected on all violations of the firearms chapter and paid into the general fund of the state treasury. The state's preemption of local firearm regulation is reasserted. Local laws and ordinances may not be inconsistent with or in excess of state law. The preemption clause does not apply to offenses committed prior to the effective date of the act.

Revenue: A new penalty assessment of 25 percent is imposed on all violations of the firearms chapter.

The fee for an initial concealed pistol license is increased from \$5 to \$20. The fee for renewal of a concealed pistol license is increased from \$3 to \$12.

**VOTES ON FINAL PASSAGE:**

Senate	40	7	
House	95	3	(House amended)
Senate	44	1	(Senate concurred)

**EFFECTIVE:** July 24, 1983

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# APPENDIX C

- C-1 Carol M. Ostrom, At Least 2 People Shot at Crowded Folklife Festival, Seattle Times, May 25, 2008
- C-2 Scott Gutierrez & Angela Galloway, City to Limit Concealed Weapons, Executive Order Coming in Wake of Folklife Shooting, Seattle Post-Intelligencer, June 7, 2008
- C-3 Sharon Pian Chan, Seattle Gun Ban Takes 1st Step, Seattle Times, June 10, 2008
- C-4 Levi Pulkkinen, Mayor Moves Forward on Gun Ban Plan, Seattle Post-Intelligencer, Nov. 8, 2008
- C-5 Susan Gilmore, Nickels Revives Gun-Ban Idea, Targets Park Facilities for Kids, Seattle Times, Sept. 19, 2009
- C-6 Seattle Times Staff, Gun Ban Starts in Seattle Parks, Seattle Times, Oct. 15, 2009
- C-7 Susan Gilmore, NRA, Others Take Aim at Seattle Gun Ban, Seattle Times, Oct. 29, 2009
- C-8 Erik Lacitis, Judge Overrules Gun Ban in Parks, Seattle Times, Feb. 13, 2010
- C-9 Maureen O'Hagan, Can City Ban Guns in Parks? Courts Wrestle Over Answer, Seattle Times, Mar. 13, 2010
- C-10 Second Amendment Foundation, Gun Rights Organizations File Lawsuit to Stop Seattle Ban (Oct. 28, 2009), <http://www.saf.org/viewpr-new.asp?id=306>
- C-11 Second Amendment Foundation, SAF, NRA Victory: Court Strikes Down Seattle Park Gun Ban, (Feb. 12, 2010), <http://www.saf.org/viewpr-new.asp?id=312>
- C-12 Second Amendment Foundation, Appeals Court Upholds SAF Victory in Lawsuit v. Seattle Parks Gun Ban (Oct. 31, 2011), <http://www.saf.org/viewpr-new.asp?id=380>

- 
- C-13 Chris McGann, AG Opinion Asked on Gun Bans, Six State Legislators Urge McKenna to Weigh in on Seattle, Other Cities' Rules, Seattle Post-Intelligencer, July 1, 2008
- C-14 Sharon Pian Chan, McKenna: Nickels Can't Issue Gun Ban, Seattle Times, Oct. 16, 2008

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# APPENDIX C-1

5/25/08 Seattle Times A1  
2008 WLNK 9915274

Seattle Times (WA)  
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May 25, 2008

Section: News

At least 2 people shot at crowded Folklife Festival  
Suspect in custody Injuries to woman, men not life-threatening

Carol M. Ostrom  
Seattle Times staff reporter

An argument that became a physical fight left at least two people wounded by a single gunshot Saturday evening at the Northwest Folklife Festival, as thousands of people listened to music and danced at Seattle Center.

Police quickly apprehended an adult male suspect. It is not known whether the shooting was deliberate, said Greg Schmidt, Seattle Police director of communications.

Schmidt said one round was fired from a Glock semiautomatic. The round passed through a woman's leg and a man's arm before possibly striking another man.

The woman and the man with the arm injury were taken to area hospitals with non-life-threatening injuries, Schmidt said. Police were interviewing the other man who may have been shot; he left the Center grounds but later returned, Schmidt said. The names of the victims were not released.

The incident occurred in a grassy area north of the International Fountain, near the Mercer Street entrance to the Center.

Although people nearby scattered when the shooting occurred about 6:30 p.m., police said, many at the festival were unaware of what had happened.

Schmidt said three police officers were nearby and immediately "jumped in and secured the firearm."

Schmidt said the man they arrested had a license for the weapon, which he was carrying in an ankle holster.

By 7:30, except for a police tape barrier around the scene of the gunfire and a lot of "guys in blue" around, as one onlooker noted, the festival appeared to be back to normal. Parents toted children and plates of food, teens in shorts giggled with their friends, and women wearing long, colorful skirts floated by, swaying to the insistent rhythms of Folklife.

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"The festival, as you can see and hear, is going on," Schmidt said. "It's a beautiful day."

Carol M. Ostrom: 206-464-2249 or [costrom@seattletimes.com](mailto:costrom@seattletimes.com)

---- INDEX REFERENCES ----

REGION: (North America (1NO39); Washington (1WA44); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (FOLKLIFE; GLOCK; INTERNATIONAL FOUNTAIN; NORTHWEST FOLKLIFE FESTIVAL; SEATTLE CENTER) (Carol M. Ostrom; Greg Schmidt; Schmidt)

EDITION: Fourth

Word Count: 361  
5/25/08 STLTI A1  
END OF DOCUMENT

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# APPENDIX C-2

6/7/08 Seattle Post-Intelligencer A1  
2008 WLNR 10850771

Seattle Post-Intelligencer (WA)  
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June 7, 2008

Section: News

CITY TO LIMIT CONCEALED WEAPONS  
EXECUTIVE ORDER COMING IN WAKE OF FOLKLIFE SHOOTING

SCOTT GUTIERREZ AND ANGELA GALLOWAY P-I reporters

Two weeks after a shooting at Seattle's Northwest Folklife Festival, Mayor Greg Nickels reportedly plans to announce restrictions Monday on concealed weapons on city property.

Nickels' office declined to offer any details about the executive order. A news conference was scheduled at the Police Department with Nickels, Police Chief Gil Kerlikowske and state legislators.

In a news release, the initiative was described as aimed at "making the city safer from guns." It follows the shooting late last month that left three people wounded at Seattle Center.

"Essentially, my understanding is that Mayor Nickels is going to announce an (executive order) pertaining to prohibiting weapons on city property. I believe it is in response to the shootings at the Folklife Festival," said one official close to the situation. The accused shooter, Clinton Grainger, 22, carried a concealed pistol license, despite a history of mental illness that didn't meet the standard for denying his license application. The Snohomish County resident has been charged in King County Superior Court with second-degree assault. Authorities say his gun fired as he tried to remove it from an ankle holster during a fight. A single bullet injured one man's nose, passed through another person's hand and lodged in a woman's leg, authorities said.

Executive orders are directives to city departments. They do not require City Council approval. They typically don't apply to the general public, but to the policies and actions of city employees, agencies and properties. For example, the mayor has issued orders requiring Seattle agencies to avoid buying bottled water and to provide job benefits to the same-sex partners of city workers.

Officials from Seattle Parks and Recreation met with Nickels' staff Friday to discuss what options might be available for improving safety in public places and city parks.

Two years ago, Nickels and Kerlikowske helped lead an unsuccessful campaign to adopt stricter state regulations requiring background checks on private sales at gun shows. The measure died in the Legislature in the face of opposition from gun rights groups. Last December, Nickels convened a summit on gun violence, bringing together local



and federal police agencies with researchers and experts. Some of the presentations focused on the public health costs of gun crimes and the so-called gun show loophole.

Any attempt by a city or county to ban guns outright in public parks - unless it exempted holders of permits to carry concealed weapons - would be illegal under state law, which pre-empts local governments from enacting gun laws that are stricter than state codes, said Dave Workman, senior editor and Western bureau chief for Gun Week magazine.

Those carrying a concealed handgun without a license would already be illegal, he said.

State pre-emption was intended to prevent confusion over having a variety of different gun laws, depending on which city or county you were in.

"This business at Folklife is the only time I've heard of some guy with a concealed pistol license doing something like that," he said. "Usually with these shootings, if you look at them, they're 19 or 20 years old, and they're not even old enough to be licensed to carry a concealed pistol."

P-I reporter Scott Gutierrez

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or [scottgutierrez@seattlepi.com](mailto:scottgutierrez@seattlepi.com).

---- INDEX REFERENCES ---

NEWS SUBJECT: (Government (1GO80); Local Government (1LO75))

REGION: (North America (1NO39); Washington (1WA44); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (KING COUNTY SUPERIOR COURT; POLICE DEPARTMENT; SEATTLE CENTER; SEATTLE PARKS) (Clinton Grainger; Dave Workman; Essentially; Greg Nickels; Kerlikowske; Nickels; Scott Gutierrez)

KEYWORDS: CITY WEAPON

EDITION: Final

Word Count: 669

6/7/08 STLPI A1

END OF DOCUMENT

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# APPENDIX C-3

6/10/08 Seattle Times B1  
2008 WLNR 10962808

Seattle Times (WA)  
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June 10, 2008

Section: Local News

**Seattle gun ban takes 1st step**

Nickels gives city staff 30 days to draw up policy Ban would apply to city property, exempt law officers; mayor acknowledges possibility of legal challenge

Sharon Pian Chan  
Seattle Times staff reporter

After a shooting at the Northwest Folklife festival injured three people, Mayor Greg Nickels will prohibit guns at Seattle Center, parks, community centers and city-run buildings.

On Monday, Nickels announced he had signed an executive order, which does not require City Council approval, directing employees to draft a plan in 30 days to create a "gun-free policy" on city property. He has not set a date for the prohibition to take effect.

"Our parks, our community centers and our public events are safer without guns," Nickels said at a news conference with Police Chief Gil Kerlikowske. "At many properties, including City Hall, you can bring a gun if you have a concealed-weapons permit. Under this order, people with concealed weapons will be asked to give up their weapon or leave."

The city does not have the authority to arrest or fine people for bringing a gun onto city property. Only the state can enact laws governing firearms, and the mayor acknowledged the city could face a legal challenge.

The city can, however, charge violators with trespassing.

Law-enforcement officers would be exempt.

Nickels said the city will start by posting signs in buildings such as City Hall. He said he hopes the city will not require pat-downs or metal detectors in city buildings, but suggested those measures as a possibility for organizers of events such as Northwest Folklife and Bumbershoot at Seattle Center. Northwest Folklife organizers declined to comment on the mayor's announcement.

Under Washington state law, cities cannot go beyond state laws restricting firearms. Nickels says a 2006 state Supreme Court ruling in a case between a gun-show organizer and the city of Sequim indicates Seattle has the authority

to prohibit guns on city property.

In that lawsuit, the Pacific Northwest Shooting Park Association sued Sequim after city officials tried to regulate how guns could be sold at a miniconvention center the city owned.

"They said, 'Are we regulating firearm sale within the city of Sequim?' And we said, 'No, we are regulating what happens on our own property,' à la city of Seattle," said Craig Ritchie, city attorney for Sequim.

Ritchie says he believes the state Supreme Court ruling in his case opens the door for Seattle to prohibit guns on city property.

State Attorney General Rob McKenna's office does not know of any cases in which the state has challenged a city for pre-empting a firearms law. It would be more likely for an individual to sue, a spokeswoman said.

Two weeks ago, a young couple were hit by stray gunfire and a third man was injured after a fight broke out at Northwest Folklife at Seattle Center, which the city runs and owns. Sarah Thorsnes, a 21-year-old who was shot in the thigh, said she appreciates the mayor's efforts but does not support his prohibition.

"It's putting a strain on people who have a right to own guns and should know how to use them properly," said Thorsnes, who lives in Renton. "I still stand behind needing to look at mental health as a problem rather than banning guns from people who have a right to have them and use them properly."

Prosecutors say the man who has been charged in the shooting, Clinton Chad Grainger, has a history of drug addiction and schizophrenia. Grainger obtained a concealed-weapon permit from the Snohomish County sheriff's office in 2007.

Nickels has urged the Legislature to pass a law denying guns to anyone who has been involuntarily committed to a mental-health facility.

Sharon Pian Chan: 206-464-2958 or [schan@seattletimes.com](mailto:schan@seattletimes.com)

--- INDEX REFERENCES ---

NEWS SUBJECT: (Legal (1LE33); Economics & Trade (1EC26); Government (1GO80); Local Government (1LO75))

REGION: (North America (1NO39); Washington (1WA44); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (LEGISLATURE; NORTHWEST FOLKLIFE; PACIFIC NORTHWEST SHOOTING PARK ASSOCIATION; SEATTLE; SEATTLE CENTER; SEQUIM; STATE ATTORNEY; SUPREME COURT) (Clinton Chad; Craig Ritchie; Grainger; Greg Nickels; Nickels; Prosecutors; Ritchie; Rob McKenna; Sarah Thorsnes; Sharon Pian Chan; Thorsnes)

EDITION: Fourth

Word Count: 704

6/10/08 STLTI B1

END OF DOCUMENT

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# APPENDIX C-4

11/8/08 Seattle Post-Intelligencer A1  
2008 WLNR 21458048

Seattle Post-Intelligencer (WA)  
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November 8, 2008

Section: News

**MAYOR MOVES FORWARD ON GUN BAN PLAN  
MCKENNA SAYS STATE LAW APPLIES**

LEVI PULKKINEN P-I reporter

An unequivocal "no" from the state Attorney General's Office is often enough to shoot down a city proposal.

Not so with a move by Seattle Mayor Greg Nickels to ban legally permitted handguns from city-owned parks and buildings, an effort that, if successful, could shatter a 47-year-old state prohibition against cities' regulation of fire-arms.

The Mayor's Office continues to build a case for the ban despite an Oct. 14 opinion issued by Attorney General Rob McKenna's office arguing that the city cannot pre-empt state gun law. The mayor hopes to introduce an administrative order next month.

"The cities are the ones on the front lines of this issue," said Regina LaBelle, legal counsel to the mayor. "We always have to keep in mind not just state law but also federal laws. But our bottom line is that we want to have common-sense gun laws."

Gun-control supporters have long targeted so-called pre-emption laws that keep gun regulation out of the hands of city lawmakers, who often are more inclined to create restrictions than their state and federal counterparts. Nickels' push represents a bright spot for gun-control advocates who've largely been stymied for more than a decade and watched this year as a string of high-profile shootings failed to elevate the issue in the national political campaigns or state races.

Nickels' move was widely criticized by supporters of gun rights, who saw it as both wrongheaded and outside the mayor's mandate. That view is shared by state Rep. Kevin Van De Wege, a Sequim Democrat who asked the attorney general to review Nickels' proposed ban.

"We quickly realized that he can't do that, that it would be illegal," Van De Wege said. "Even people who don't like guns can see the point here that we can't have every municipality having different gun regulations."

The past eight years have been marked by stagnation or backward movement for gun-control advocates, said Ladd Everitt, communications director for the Coalition to Stop Gun Violence.

President Bush allowed limits on assault weapons and other firearms to expire. In response to a scathing Bureau of Alcohol, Tobacco, Firearms and Explosives report, Congress severely curtailed the agency's ability to share information on guns used in crime. And, though it received mixed reviews on both sides of the gun question, the U.S. Supreme Court affirmed a constitutional right to individual gun ownership.

A Democratic majority in the House of Representatives offered no relief for gun-control proponents.

"Anyone who thought this Democratic Congress was going to be strong on gun issues was sadly mistaken," Everitt said. "That said, I think that Barack Obama gets this, understands the balancing act" between the views of rural and urban Americans on the issue.

Some gun owners fear what Obama and a stronger Democratic Congress might do. Gun stores across the nation report a surge in business since Tuesday's election, attributing it to buyers worried that their ability to obtain firearms might be curtailed.

The Virginia Tech massacre did prompt Congress to improve the flawed national database used to perform background checks on gun buyers. If funded, the improvement package should ensure that more states submit mental health information to the system, said Eric Nelson, an assistant attorney general representing the Department of Social and Health Services.

As the system currently stands, most states fail to identify mentally ill individuals who've been confined against their will in the federal system. As a practical matter, Nelson said, that means someone institutionalized in Oregon or another state would pass a background check in Washington.

"It certainly is the case that not every state is submitting mental health records," Nelson said. "If FedEx can track a package around the world, how is it that the state and federal authorities can't track these prohibitive records?"

Washington began submitting records to the system in 2004, Nelson said. But the state background-check system remains fragmented, with each of the state's 291 police agencies charged with conducting state background checks for concealed pistol licenses.

Arriving at the Northwest Folklife Festival on May 24, 22-year-old Clinton Chad Grainger carried both his pistol and a concealed-weapons permit issued to him despite a history of mental illness. Hours later, he shot and wounded two people during an altercation.

The accidental shooting prompted Nickels to propose a ban on all guns from city-owned parks and buildings. That effort, LaBelle said, is still under way despite the attorney general's opinion.

LaBelle said the city needs greater "clarity" on state law, either from the Legislature or through the courts. She said the Mayor's Office has found 39 other Washington cities that already have restrictions on the books, which shows the issue is far from settled.

The opinion followed the line thought to be enshrined in a 1961 law stating that local gun rules "inconsistent" with state law are "pre-empted and repealed." Expressing a view backed by the attorney general's finding, Van De Wege said state law bans local governments from regulating guns.

Speaking more broadly, Van De Wege said he doesn't see a need for tighter restrictions on guns. The decline in crime rates around the state, he said, shows additional rules aren't needed.

"My concern, and I think a lot of my constituents' concern, is that we're going to end up punishing a lot of law-abiding citizens," he said. "They feel most comfortable carrying a gun, and they want to be able to do that."

LaBelle said the city is looking at only a single change. But she said city officials deserve the authority to protect citizens.

"The mayor has asked repeatedly for the Legislature to allow local representatives to create laws they think are right for their cities," she said. "It's obvious that it's a local concern."

The Mayor's Office plans to release an administrative order later this month in line with the earlier proposal. A public hearing would then take place in early December.

P-I reporter Levi Pulkkinen can be reached at 206-448-8348 or levipulkkinen@seattlepi.com.

--- INDEX REFERENCES ---

COMPANY: HOUSE OF REPRESENTATIVES; FEDERAL EXPRESS INTERNATIONAL INC; FEDEX EXPRESS CORP; FEDERAL EXPRESS INTERNATIONAL FRANCE SNC

NEWS SUBJECT: (Social Issues (1SO05); Gun Rights & Regulations (1GU97); Legal (1LE33); Economics & Trade (1EC26); Legislation (1LE97); Judicial (1JU36); Government Litigation (1GO18); Government (1GO80); Local Government (1LO75))

REGION: (North America (1NO39); USA (1US73); Americas (1AM92); Washington (1WA44))

Language: EN

OTHER INDEXING: (BUREAU OF ALCOHOL; CLINTON CHAD GRAINGER; CONGRESS; DEMOCRATIC; DEPARTMENT OF SOCIAL; FEDEX; FIREARMS; HEALTH SERVICES; HOUSE OF REPRESENTATIVES; NORTHWEST FOLKLIFE FESTIVAL; SEQUIM DEMOCRAT; STOP GUN VIOLENCE; TOBACCO; US SUPREME COURT; VIRGINIA TECH) (Arriving; Bush; De Wege; Eric Nelson; Everitt; Expressing; Greg Nickels; Kevin Van; LaBelle; Ladd Everitt; Levi Pulkkinen; MOVES FORWARD; Nelson; Nickels; Obama; Regina LaBelle; Rob McKenna; Van)

KEYWORDS: CITY STATE WEAPON LAW

EDITION: Final

Word Count: 1226

11/8/08 STLPI A1

END OF DOCUMENT



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# APPENDIX C-5

9/19/09 Seattle Times B1  
2009 WLNR 18635233

Seattle Times (WA)  
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September 19, 2009

Section: NWSaturday

Nickels revives gun-ban idea, targets park facilities for kids

Susan Gilmore  
Seattle Times staff reporter

Mayor Greg Nickels has proposed a ban on guns in city-park facilities, specifically to protect children, and the move has already drawn fire from gun-rights advocates and questions about its legality.

The prospective ban, announced Friday, would cover playgrounds, community centers, sports fields, swimming pools and water-play areas.

The new proposal is not as far-reaching as Nickels' failed effort last year to ban guns from all city facilities after a shooting at Northwest Folklife Festival at Seattle Center. Nickels said signs would be posted notifying the public about the gun ban.

"These are the places where our children and families gather, and it is common sense that community centers, playgrounds and swimming pools are safer without guns," he said.

The mayor says state law does not prohibit a property owner from imposing conditions on the possession of firearms on his or her property.

According to Nickels, the city believes a municipal property owner such as Seattle may impose limits on firearms as a condition of entry or use of particular facilities, particularly those where children and youth are likely to be.

But state Attorney General Rob McKenna disagrees. In a statement Friday, he said he has a history of working to protect children's safety, but "as Mayor Nickels is aware, the Attorney General's Office issued an opinion in 2008, which found that state law pre-empts local authority to adopt firearms regulations, unless specifically authorized by law.

"Mayor Nickels is welcome to request legislation to change state law, but current state law pre-empts a city's authority to pass local laws prohibiting the firearms possession on city property or in city-owned facilities."

Nickels' proposal was immediately condemned by Alan Gottlieb, with the pro-gun Second Amendment Foundation.

"This must be Greg Nickels' desperate parting shot at gun owners who worked hard to make sure that he not survive the primary election last month," he said. "The proposal is blatantly illegal."

Gottlieb said his group already has plaintiffs who will sue if Nickels' proposal is implemented.

Nickels said the ban would not change city law, so it would carry no criminal or civil penalties. Violators would be evicted from parks under the criminal-trespass law.

Gottlieb said Nickels has no right to invoke the trespass law. "He's a two-time loser," he said. "Half the households in Seattle own firearms."

The National Rifle Association did not return calls for comment.

According to the state Department of Licensing, there are 238,994 concealed-weapons permits in the state, 48,838 in King County.

The gun-ban proposal would affect 26 community centers, four environmental-learning centers, 10 pools, 30 wading pools, two small-craft centers, two specialized centers, 139 playgrounds, 213 ballfields, six late-night recreation sites, three teen-life centers and 82 outdoor tennis and basketball courts.

According to the city, more than 1.8 million people visited and attended programs in city-park facilities last year.

More than 108,000 children visited wading pools, and more than 59,000 events were scheduled at sports fields.

In 2008, the city introduced a policy requiring organizations that lease Seattle Center and other city property to take steps to prohibit guns, such as providing lockboxes at Seattle Center. Nickels says that lease policy will become an executive order, which means it doesn't need legislative approval. It will affect tenants such as One Reel.

Nickels has urged state lawmakers to ban assault weapons, require criminal-background checks at gun shows and require trigger locks and safe storage of firearms to reduce gun violence.

According to the mayor's office, state law restricts possession of firearms in schools, courts, jails and areas that serve alcohol, but it does not prevent them in parks.

The city would authorize parks staff to inform people of the rule.

If the parks department adopts Nickels' proposal, the changes could take effect as early as October, once the signs are posted.

Susan Gilmore: 206-464-2054 or [sgilmore@seattletimes.com](mailto:sgilmore@seattletimes.com)

Public can respond

To comment on Seattle Mayor Greg Nickels' proposal to ban guns from city-park facilities, go to [www.seattle.gov/firearmsrule](http://www.seattle.gov/firearmsrule) or mail your thoughts to Seattle Parks and Recreation Department, 100 Dexter Ave. N., Seattle, WA 98103. Comments will be taken until Oct. 4.

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---- INDEX REFERENCES ---

NEWS SUBJECT: (Gun Rights & Regulations (1GU97); Social Issues (1SO05); Legal (1LE33); Legislation (1LE97); Judicial (1JU36); Government (1GO80); Local Government (1LO75))

INDUSTRY: (Personal Services (1PE76); Swimming Pools (1SW47); Health Clubs (1HE35); Consumer Products & Services (1CO62))

REGION: (North America (1NO39); USA (1US73); Americas (1AM92); Washington (1WA44))

Language: EN

OTHER INDEXING: (AMENDMENT FOUNDATION; NATIONAL RIFLE ASSOCIATION; RECREATION DEPARTMENT; SEATTLE; SEATTLE CENTER; SEATTLE PARKS; STATE; STATE DEPARTMENT OF LICENSING) (Alan Gottlieb; Gottlieb; Greg Nickels; N.; Nickels; Rob McKenna; Susan Gilmore; Violators)

EDITION: Fourth

Word Count: 872

9/19/09 STLTI B1

END OF DOCUMENT

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# APPENDIX C-6

10/15/09 Seattle Times B1  
2009 WLNK 26375901

Seattle Times (WA)  
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October 15, 2009

Section: NWThursday

Gun ban starts in Seattle parks, recreation areas  
Signs will be posted Nickels, attorney general at odds over rule's legality; group threatens to file suit

Seattle Times Staff

A ban on guns in certain Seattle park facilities went into effect Wednesday, according to the mayor's office.

The move, implemented to protect children, and which has drawn criticism including questions about its legality, will eventually affect hundreds of playgrounds, community centers, sports fields, swimming pools and water-play areas.

"When children and families visit a Seattle Parks and Recreation pool, playground, community center or other facility, they are entitled to a reasonable expectation of safety," Mayor Greg Nickels said in a news release.

The ban, a new rule by Parks and Recreation, will be in effect only at facilities where signs have been posted, according to the release.

Community centers will get the first signs, followed by pools, popular play areas, and ballfields. The mayor's office said all facilities should have the signs by Dec. 1.

The first signs are expected to go up Friday at South Park Community Center, Garfield Community Center and Bitter Lake Community Center

If someone with a gun enters one of the designated facilities, he or she will be asked by parks employees or Seattle police officers to leave. If the person won't leave, he or she could be cited or arrested for criminal trespass, according to the mayor's office.

Nickels has argued that state law does not prohibit a property owner from imposing conditions on possessing firearms on his or her property.

The city's position, Nickels has said, is that a municipal-property owner such as Seattle may impose limits on firearms as a condition of entry or use of particular facilities, particularly those where children and youths are likely to be.

State Attorney General Rob McKenna, however, has disagreed.

In a statement released in mid-September, he said he has a history of working to protect children's safety, but "as Mayor Nickels is aware, the Attorney General's Office issued an opinion in 2008, which found that state law pre-empts local authority to adopt firearms regulations, unless specifically authorized by law."

The opinion won't stop Nickels from invoking his ban, said Janelle Guthrie, spokeswoman for the Attorney General's Office. However, she said, the opinion could be used if the law is challenged, as gun advocates have vowed to do.

Alan Gottlieb, founder of Bellevue-based pro-gun Second Amendment Foundation, said his group already has plaintiffs who will sue, and officials with the foundation said a lawsuit will be filed "immediately."

In his decision to invoke a gun ban in city parks, Nickels pointed to the shooting of a Franklin High School basketball player outside the Garfield Community Center last December and a killing of a woman at a temporary Red Cross shelter in the Miller Community Center on Capitol Hill in 2004.

Information from The Seattle Times archives is included in this report.

--- INDEX REFERENCES ---

NEWS SUBJECT: (Social Issues (1SO05); Gun Rights & Regulations (1GU97); Legal (1LE33); Business Litigation (1BU04); Judicial (1JU36); Government (1GO80); Local Government (1LO75); Business Management (1BU42); Business Lawsuits & Settlements (1BU19))

REGION: (North America (1NO39); USA (1US73); Americas (1AM92); Washington (1WA44))

Language: EN

OTHER INDEXING: (AMENDMENT FOUNDATION; ATTORNEY; GARFIELD COMMUNITY CENTER; MILLER COMMUNITY CENTER; PARK COMMUNITY CENTER; RED CROSS; STATE ATTORNEY) (Alan Gottlieb; Greg Nickels; Information; Janelle Guthrie; Nickels; Recreation; Rob McKenna)

EDITION: Fourth

Word Count: 564

10/15/09 STLTI B1

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# APPENDIX C-7



10/29/09 Seattle Times B1  
2009 WLNR 21637153

Seattle Times (WA)  
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October 29, 2009

Section: NWThursday

NRA, others take aim at Seattle gun ban

Susan Gilmore  
Seattle Times staff reporter

Four gun-rights organizations, including the National Rifle Association, are suing the city of Seattle and Mayor Greg Nickels over the new ban on guns in city parks.

They were joined by five individuals, including two Department of Corrections workers who say they need to carry their personal weapons in city parks to protect themselves against criminals.

"The city is acting illegally in putting a ban into effect," said Alan Gottlieb, with the Second Amendment Foundation, and one of the plaintiffs in the lawsuit filed in King County Superior Court. "Lots of people in Seattle need firearms for self-protection."

Nickels has said the ban, which took effect this month, is intended to protect children and applies to city playgrounds, community centers, sports fields, swimming pools and water-play areas.

If someone with a gun enters one of those facilities, he or she will be asked by parks employees or Seattle police to leave. If the person won't leave, he or she could be cited or arrested for criminal trespass, according to the mayor's office.

The plaintiffs ask that the city not implement the new rule and be blocked from posting any more no-firearms signs.

Nickels has argued that state law does not prohibit a property owner from imposing conditions on possessing firearms on his or her property.

Nickels has said that a municipal-property owner such as Seattle may impose limits on firearms as a condition of entry or use of particular facilities, particularly those where children and other young people are likely to be.

State Attorney General Rob McKenna, however, has disagreed, saying his office issued an opinion in 2008 which found that state law pre-empts local authority to adopt firearms regulations, unless specifically authorized by law.

Gottlieb said McKenna's opinion has been included as one of the exhibits in the lawsuit.

"It is an incontestable fact that the State of Washington has the exclusive right to regulate the possession of firearms in Washington," according to the lawsuit. "It is equally incontestable that cities in the state of Washington may not enact local laws or regulations that prohibit the possession of firearms on city property."

According to the state Department of Licensing, there are 238,994 concealed-weapons permits in the state, 48,838 in King County.

The state is an "open-carry" state, and that doesn't require residents to have a concealed-weapons permit as long as the guns are in plain view. Guns are restricted from such places as schools, jails and mental institutions.

Gottlieb's group was joined in the lawsuit by the National Rifle Association, the Citizens Committee for the Right to Keep and Bear Arms and the Washington Arms Collectors.

The gun ban has become an issue in the mayor's race. Mike McGinn supports the ban and has attacked Joe Mallahan for questioning its legality and effectiveness.

Mallahan's spokeswoman, Charla Neuman, said Wednesday that the lawsuit was "disappointing, but not surprising."

At a debate Wednesday night, Mallahan said that knowing a law firm was taking the case pro bono met one of his big concerns.

The city said Orrick Herrington & Sutcliffe will represent the city.

One of the plaintiffs in the lawsuit, Winnie Chan, is a Department of Corrections employee who lives and works in Seattle. According to the suit, she often carries her personal concealed weapon when she is not on duty, because she worries that people she encounters in her line of work may retaliate against her. She said she enjoys visiting Seattle parks, but her favorite now has a no-weapons sign.

Another plaintiff, Ray Carter, is a past co-chairman of the Seattle Pride Parade. According to the lawsuit, he said he carries a concealed weapon because he feels, as an openly gay man, he is susceptible to becoming a victim of hate-related crimes.

And Gary Goedecke owns a business at the Pike Place Market and carries a weapon to work. He walks through Victor Steinbrueck Park.

In response to the suit, the city's law department issued a statement that said, in part: "the City's policy was put in place to protect our most vulnerable and defenseless citizens, our children. The City's most important public duty is to protect its citizens from harm, especially when they are visiting City facilities."

Staff reporter Emily Heffter contributed to this report. Susan Gilmore: 206-464-2054 or [sgilmore@seattletimes.com](mailto:sgilmore@seattletimes.com)

---- INDEX REFERENCES ---

COMPANY: ORRICK HERRINGTON AND SUTCLIFFE

NEWS SUBJECT: (Gun Rights & Regulations (1GU97); Social Issues (1SO05); Government (1GO80); Local Government (1LO75))

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REGION: (North America (1NO39); Washington (1WA44); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (AMENDMENT FOUNDATION; CITIZENS COMMITTEE; DEPARTMENT OF CORRECTIONS; KING COUNTY; KING COUNTY SUPERIOR COURT; NATIONAL RIFLE ASSOCIATION; NRA; ORRICK HERRINGTON SUTCLIFFE; SEATTLE PRIDE PARADE; STATE; STATE ATTORNEY; STATE DEPARTMENT OF LICENSING; VICTOR STEINBRUECK PARK) (Alan Gottlieb; Bear Arms; Charla Neuman; Emily Heffter; Gary Goedecke; Gottlieb; Greg Nickels; Joe Mallahan; Mallahan; McKenna; Mike McGinn; Nickels; Ray Carter; Rob McKenna; Staff; Susan Gilmore; Winnie Chan)

EDITION: Fourth

Word Count: 875  
10/29/09 STLTI B1  
END OF DOCUMENT

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# APPENDIX C-8

2/13/10 Seattle Times B1  
2010 WLNR 3284395

Seattle Times (WA)  
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February 13, 2010

Section: NWSaturday

**Judge overrules gun ban in parks**  
**Appeal possible, but city to remove signs Gun-rights groups were joined in challenge by park strollers who carry arms for protection**

Erik Lacitis  
Seattle Times staff reporter

The rule banning firearms in Seattle parks was tossed out Friday by King County Superior Court Judge Catherine Shaffer, who said the city cannot pre-empt state law.

The city now has 30 days to remove the 116 metal signs, which are about 1 by 1- feet in size and show a handgun inside a red circle, with a red line crossing out the gun. In all-capital letters there is the warning: "FIREARMS PROHIBITED."

Assistant City Attorney Gary Keese said, "We will comply with the court order and are weighing with the mayor and City Council the options for appeal."

Mayor Mike McGinn issued a one-paragraph, late-afternoon statement that said, "I am disappointed in today's (Friday's) ruling. Cities should have the right to restrict guns in playground, pools and community centers where children are present ... It's time for the state Legislature to change that law."

The challenge to the parks rule that was instituted by former Mayor Greg Nickels — it was not an ordinance — was brought by five individuals, as well as the Second Amendment Foundation, Citizens for the Right to Keep and Bear Arms, Washington Arms Collectors and the National Rifle Association.

One of the individuals in the challenge was Winnie Chan, of Seattle, described in the lawsuit as a 36-year-old parole and probation officer with the state.

The suit said she enjoyed walking in Lincoln and Discovery parks and the Alki Beach area, all subject to the parks firearms rule that took effect last October.

Chan said her job required her to supervise offenders released from jail.

"Because this job has the potential to be very dangerous, she is required to be armed and has received substantial training in all aspects of firearm use," said the lawsuit. "Ms. Chan sometimes carries a personal firearm when she is off duty in part because of the likelihood that she will encounter people she has apprehended in her line of work who may wish her harm."

Another individual who was part of the suit was Raymond Carter, 44, of Seattle, who was described as a past co-chair of the Seattle Pride Parade and was the founding president of the Seattle Chapter of Pink Pistols/Cease Fear.

The suit said about Carter: "He routinely carries a firearm when he is lawfully permitted to do so because he strongly believes that as an openly gay man, he is more susceptible to becoming a victim of a hate-related crime but, because of health issues, he does not feel that he is physically capable of running away."

The suit said that Carter used to regularly go walking at Lincoln Park, Volunteer Park and Alki Beach.

The cost to the city in defending the parks rule was minimized because the Seattle law firm of Orrick, Herrington & Sutcliffe had said it would provide free legal defense for the rule.

The law firm also is representing the city in federal court, where the constitutionality of the rule is being challenged.

Steven Fogg, one of the attorneys who represented the individuals and groups challenging the parks rule, said he never understood why Nickels went ahead with the ban, especially after state Attorney General Rob McKenna said state law pre-empts local authority to adopt firearms regulations. Fogg said the city was warned there would be a legal challenge.

"I think it's a question of stubbornness," he said.

The parks gun ban had a nasty political turn in the mayoral election race between McGinn and Joe Mallahan.

Just as ballots began landing in voters' mailboxes, McGinn's campaign launched "robocalls" accusing Mallahan of "siding with the NRA" because he questioned the wisdom of the parks gun ban.

Mallahan said what he questioned was the potential legal fees in defending the parks rule, but as long as a private law firm was willing to pick up those costs, the ban was fine with him.

Dewey Potter, spokeswoman for Seattle Parks, said the signs cost about \$2,500 to make. They were bolted onto posts as crews made their regular rounds.

She said she didn't know what would happen to the signs.

Perhaps collector's items?

"I'm not sure who'd be interested," said Potter.

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--- INDEX REFERENCES ---

COMPANY: NATSIONALNA AGENTSIIA ZA PRIKHODITE; SEATTLE S R O

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NEWS SUBJECT: (Gun Rights & Regulations (1GU97); Social Issues (1SO05); Government (1GO80); Local Government (1LO75))

REGION: (North America (1NO39); Washington (1WA44); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (AMENDMENT FOUNDATION; ASSISTANT CITY; BEAR ARMS; COUNTY SUPERIOR COURT; NATIONAL RIFLE ASSOCIATION; NRA; PINK PISTOLS; PROHIBITED; SEATTLE; SEATTLE CHAPTER; SEATTLE PARKS; SEATTLE PRIDE PARADE) (Appeal; Carter; Catherine Shaffer; Chan; Dewey Potter; Erik Lacitis; Fogg; Gary Keese; Greg Nickels; Herrington Sutcliffe; Joe Mallahan; Mallahan; McGinn; Mike McGinn; Nickels; Potter; Raymond Carter; Rob McKenna; Steven Fogg; Volunteer Park; Winnie Chan)

EDITION: Fourth

Word Count: 816  
2/13/10 STLTI B1  
END OF DOCUMENT

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# APPENDIX C-9



3/13/10 Seattle Times A1  
2010 WLNR 5445914

Seattle Times (WA)  
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March 13, 2010

Section: News

Can city ban guns in parks? Courts wrestle over answer  
Federal judge says restriction allowable But for now, state law thwarts Seattle officials

Maureen O'Hagan  
Seattle Times staff reporter

It's a case of dueling rulings.

On Thursday, a federal judge ruled that Seattle's ban on carrying firearms in city parks and community centers passes constitutional muster. But last month, a King County Superior Court judge ruled that the city cannot ban firearms in those areas.

In this instance, the King County ruling takes precedent. Despite Thursday's federal court decision, the city's gun ban is still on indefinite hold.

"We are still bound by the state court injunction," said Mayor Mike McGinn. "But the significance of the federal court ruling is this is not a constitutional issue. This is an issue of state law."

Last year, under the direction of then-Mayor Greg Nickels, the city's Parks and Recreation department instituted a new rule banning firearms on certain city property where children were likely to be present.

There were no criminal penalties. Rather, violators would be asked to leave, although they could face charges of criminal trespass if they refused. The rule took effect last October.

That same month, five people and several gun-rights organizations filed suit in state court challenging the ban.

And in November, Robert C. Warden, a Kent attorney, actually tested it. After announcing to the media and city officials what he planned to do, he walked into Southwest Community Center with a Glock pistol under his jacket. He was asked to leave and did so.

Then he filed suit against the city in federal court.

Daniel Dunne, an attorney with the firm Orrick, Herrington & Sutcliffe, volunteered his time to represent the city.

Between the two lawsuits, there were three key questions:

- Was the firearms ban legal under the state constitution?
- Was it legal under the U.S. Constitution?
- And did it violate state law?

On Thursday, U.S. District Judge Marsha Pechman ruled on the first two questions. She found the city was within its rights to ban firearms in city parks. Under current case law, the Second Amendment constrains the actions of Congress, not cities and states.

She found nothing in the state constitution that prohibited the city's actions, either. Because the park rule was "created to ensure safe areas for children and youth to recreate," Pechman wrote, it was a reasonable restriction. She quoted Supreme Court Justice Antonin Scalia, who noted in another case the "long-standing prohibitions on the possession of firearms ... in sensitive places" such as schools and courthouses.

The Superior Court judge focused on the third question: Did the gun ban violate state law?

Just because something is permitted under the U.S. Constitution doesn't mean it's automatically allowed under state law. In her ruling last month, King County Superior Court Judge Catherine Shaffer determined that Washington law does, in fact, prohibit cities and other municipalities from restricting firearms possession. Only the state Legislature has authority to enact such restrictions, she ruled.

Seattle must abide by that ruling. The city has taken down the 116 signs it had posted in parks and community centers announcing that firearms were prohibited.

The city maintains that state law does not prohibit cities from restricting guns on property they own, such as community centers — much like private-property owners can make their own rules. Officials cite case law to that effect.

McGinn thinks the Legislature should change the state law to make it more clear that cities can enact such rules. In the meantime, the city plans to appeal.

And so is Warden, the plaintiff in the federal case.

"I'm in it for the long term," he said.

He's hopeful that a case before the U.S. Supreme Court will help him get Pechman's ruling overturned. That case concerns the city of Chicago's weapons laws, considered the most restrictive in the nation.

The Supreme Court is considering the same basic question Pechman did: Does the Second Amendment apply to the states or just to the federal government? It is seen among lawyers as a companion to a similar case involving gun restrictions in Washington, D.C.

The Supreme Court's 5-4 decision that struck down the D.C. gun law in 2008 "left the NRA and gun-rights activists quite confident" about the Chicago case, said Steve Fogg, an attorney representing the National Rifle Association and other plaintiffs in the King County case.

If they're right, it casts doubts on Pechman's ruling.

Maureen O'Hagan: 206-464-2562 or mohagan@seattletimes.com

" We are still bound by the state court injunction. But the significance of the federal court ruling is this is not a constitutional issue. This is an issue of state law."

Seattle Mayor

Mike McGinn

--- INDEX REFERENCES ---

COMPANY: JIAN DE GONG YE GU FEN YOU XIAN GONG SI

NEWS SUBJECT: (Gun Rights & Regulations (1GU97); Social Issues (1SO05); Legal (1LE33); Government (1GO80); Local Government (1LO75); Judicial (1JU36))

REGION: (North America (1NO39); Americas (1AM92); Illinois (1IL01); USA (1US73))

Language: EN

OTHER INDEXING: (CONGRESS; KENT; KING COUNTY; KING COUNTY SUPERIOR COURT; NATIONAL RIFLE ASSOCIATION; PECHMAN; SOUTHWEST COMMUNITY CENTER; SUPERIOR COURT; SUPREME COURT; SUPREME COURT JUSTICE ANTONIN SCALIA; US CONSTITUTION; US SUPREME COURT) (Catherine Shaffer; Daniel Dunne; Greg Nickels; Herrington Sutcliffe; Marsha Pechman; Maureen O'Hagan; McGinn; Mike McGinn; Pechman; Robert C. Warden; Steve Fogg; Warden)

EDITION: Fourth

Word Count: 916  
3/13/10 STLTI A1  
END OF DOCUMENT

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# APPENDIX C-10



# NEWS RELEASE

## Second Amendment Foundation

12500 NE Tenth Place • Bellevue, WA 98005  
(425) 454-7012 • FAX (425) 451-3959 • [www.saf.org](http://www.saf.org)

# GUN RIGHTS ORGANIZATIONS FILE LAWSUIT TO STOP SEATTLE BAN

**For Immediate Release: 10/28/2009**

BELLEVUE, WA – The Second Amendment Foundation, National Rifle Association and five local residents today filed a lawsuit challenging a new Seattle parks regulation that bans firearms, arguing that the ban violates Washington State's long-standing preemption statute. They are joined by the Citizens Committee for the Right to Keep and Bear Arms and the Washington Arms Collectors.

The lawsuit was filed in King County Superior Court names the City of Seattle, Mayor Greg Nickels and Timothy Gallagher, superintendent of Parks and Recreation, as defendants. Plaintiffs are represented by Seattle attorney Steve Fogg with the Seattle law firm of Corr, Cronin, Michelson, Baumgardner & Preece LLC.

"This ban violates Washington's 26-year-old model preemption statute," noted SAF Executive Vice President Alan M. Gottlieb. "The ban makes it impossible, under threat of criminal trespass penalty, to lawfully carry firearms for the protection of spouses, partners and children on public property where these citizens have a right to be. We are once again delighted to be joined by the NRA in this action. Our successful collaborations in the past stopped illegal gun confiscations in New Orleans following Hurricane Katrina, and nullified an illegal gun ban in the City of San Francisco."

Individual plaintiffs in the case are:

Winnie Chan, a Department of Corrections employee who lives in Seattle and works in West Seattle. When she is not on-duty, she often carries her personal concealed handgun, particularly when she is going to be in unfamiliar locations, out late at night, or in large/crowded places. (DOC policy prohibits her from carrying her state-issued firearm when she is off-duty, and therefore she owns a personal firearm.) She is concerned that people she has encountered on the job may be disgruntled and pose a threat to her safety. She sometimes visits Lincoln Park for recreation, and she has seen a sign prohibiting firearms there.

Ray Carter, also a West Seattle resident employed as a car salesman at MC Electric Vehicles in Seattle. He is active in the gay community; he co-chaired the Pride Parade in the mid-1990s and founded the Seattle Chapter of Pink Pistols/Cease Fear. He has testified in Olympia and at City Hall regarding gun bans. The Seattle Weekly wrote an article about Ray in June 2000 entitled "Gays and Guns." He carries his concealed pistol any place where it is legal, and he believes this is necessary because he is susceptible to hate-related crimes. Ray sometimes visits Lincoln Park and Alki Beach, and he states that he has seen signs prohibiting firearms at those locations.

Gary Goedecke, owner and proprietor of Pikeplace Marketwear, a 35-year old business at Pike Place Market. A Bothell resident, he has been actively involved with the Pike Place Market for years. Gary is an avid gun owner and carries a concealed pistol wherever he can. Gary notes that Steinbrook Park is directly adjacent to the Market and is a very dangerous place; he fears for the safety of his wife (who also works at the Market) and his employees.

Gray Peterson of Lynnwood, who often visits Seattle parks facilities with his domestic partner. Active in the Seattle-area gay community, Peterson is licensed to carry a concealed firearm and does so where it is lawfully permitted because of concerns that he is susceptible to becoming a victim of hate-related crimes. Signs have been posted at some of his favorite parks that prohibit firearms possession.

Robert Kennar, a Department of Corrections employee and resident of Federal Way. He frequently works in Seattle and visits parks and recreation facilities. Kennar has been a crime victim and he often observes criminal activity in Seattle. He is licensed to carry a concealed handgun and always carries his personal firearm when not on duty where he is permitted to do so. He is concerned about retaliation from people he encounters in his line of work. Kennar enjoys visiting Seattle parks, but one of his favorite parks now displays a sign prohibiting firearms.

"This ban affects the rights of all Washington citizens who may visit Seattle parks property and recreation facilities, and especially thousands of Seattle gun owners, many of whom are members of both organizations," Gottlieb stated. "It essentially impairs the right of law-abiding citizens to bear arms for personal protection, which is explicitly protected by Article 1, Section 24 of the state constitution."

Washington State Attorney General Rob McKenna has issued an opinion that the ban is illegal. Under provisions of the ban, legally-armed citizens face arrest for criminal trespass if they enter park property.

"The parks ban is a going-away gift of sour grapes from ousted Mayor Greg Nickels to the citizens of Seattle," Gottlieb observed. "He is leaving a mess for his successor, and the taxpayers who rejected his third term bid, to clean up."

The Second Amendment Foundation ([www.saf.org](http://www.saf.org)) is the nation's oldest and largest tax-exempt education, research, publishing and legal action group focusing on the Constitutional right and heritage to privately own and possess firearms. Founded in 1974, The Foundation has grown to more than 650,000 members and supporters and conducts many programs designed to better inform the public about the consequences of gun control. In addition to the landmark McDonald v. Chicago

Supreme Court Case, SAF has previously funded successful firearms-related suits against the cities of Los Angeles; New Haven, CT; New Orleans; Chicago and San Francisco on behalf of American gun owners, a lawsuit against the cities suing gun makers and numerous amicus briefs holding the Second Amendment as an individual right.

**-END-**

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# APPENDIX C-11





# NEWS RELEASE

## Second Amendment Foundation

12500 NE Tenth Place • Bellevue, WA 98005  
(425) 454-7012 • FAX (425) 451-3959 • [www.saf.org](http://www.saf.org)

# SAF, NRA VICTORY: COURT STRIKES DOWN SEATTLE PARK GUN BAN

**For Immediate Release: 2/12/2010**

SEATTLE, WA – A King County Superior Court judge has ruled in favor of a lawsuit filed by the Second Amendment Foundation and National Rifle Association, striking down a ban on guns in city parks because it violates Washington State's long-standing preemption statute.

Judge Catherine Shaffer ruled from the bench that the gun ban, adopted under former Mayor Greg Nickels, violates Washington's law, which placed sole authority for regulating firearms in the hands of the State Legislature. That law was adopted in 1983 and amended in 1985, and has served as a model for similar laws across the country.

SAF and NRA were joined in the lawsuit by the Citizens Committee for the Right to Keep and Bear Arms, the Washington Arms Collectors and five individual plaintiffs.

"This is a great victory for the rule of law and Washington citizens," said SAF Executive Vice President Alan M. Gottlieb. "Greg Nickels was so blinded by his personal hatred for firearms owners and his own arrogance that he imagined the city under his control could simply ignore state law. That arrogance cost Nickels his job last year. We repeatedly warned him not to push a gun ban, but he refused to listen.

"It is also a victory for the Legislature," he observed, "because this case affirms the intent of lawmakers in 1983 to prevent cities like Seattle from creating a nightmare patchwork of conflicting and confusing firearms regulations. The ruling solidifies the legislature's authority and sends a message to city and county governments to stop meddling with the rights of Washington citizens."

Gottlieb suggested a review of local ordinances may now be in order, so that city and county governments can be compelled to remove old gun regulations or face legal consequences.

"This ruling puts anti-gun local officials on notice that legally-armed citizens have

rights, too," Gottlieb stated.

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The Second Amendment Foundation ([www.saf.org](http://www.saf.org)) is the nation's oldest and largest tax-exempt education, research, publishing and legal action group focusing on the Constitutional right and heritage to privately own and possess firearms. Founded in 1974, The Foundation has grown to more than 650,000 members and supporters and conducts many programs designed to better inform the public about the consequences of gun control. In addition to the landmark McDonald v. Chicago Supreme Court Case, SAF has previously funded successful firearms-related suits against the cities of Los Angeles; New Haven, CT; New Orleans; Chicago and San Francisco on behalf of American gun owners, a lawsuit against the cities suing gun makers and numerous amicus briefs holding the Second Amendment as an individual right.

**-END-**

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# APPENDIX C-12



# NEWS RELEASE

## Second Amendment Foundation

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# APPEALS COURT UPHOLDS SAF VICTORY IN LAWSUIT V. SEATTLE PARKS GUN BAN

**For Immediate Release: 10/31/2011**

BELLEVUE, WA – The Washington State Court of Appeals for Division 1 today unanimously upheld a 2010 King County Superior Court ruling against the City of Seattle's ban on firearms in city parks in a lawsuit originally brought by the Second Amendment Foundation, other gun rights groups and five individual plaintiffs.

SAF Executive Vice President Alan M. Gottlieb said he had always been confident that the Appeals Court would rule "in favor of the law and against the attempt by Seattle to dance around it."

"We told former Mayor Greg Nickels he was wrong," Gottlieb said, "and we have reminded the city under Mayor Mike McGinn that it was wrong, and now the Appeals Court has confirmed our position."

SAF was joined in the lawsuit by the Citizens Committee for the Right to Keep and Bear Arms, the National Rifle Association and Washington Arms Collectors.

Writing for the Court, Presiding Chief Judge Ann Schindler noted, "We hold that under the plain language of RCW 9.41.290 and RCW 9.41.300, the city's attempt to regulate the possession of firearms at designated park areas and park facilities open to the public by adopting the Firearms Rule is preempted by state law."

"This is not only a victory for the citizens of Washington State," he said, "but also for the State Legislature, which had the wisdom in 1983 and 1985 to pass and strengthen our preemption statute. This law has become the model for other state statutes across the country."

"The ruling is also an affirmation of Judge Catherine Shaffer's original trial court ruling last year," he continued. "She had the foresight to include observations about our state constitutional right to bear arms but also the Second Amendment."

“Now that the Second Amendment has been incorporated to the states through our victory in McDonald v. City of Chicago,” Gottlieb concluded, “it is going to be impossible for anti-gun politicians in the Evergreen State to defy our preemption statute and our constitutional rights. Such local rules and ordinances are illegal, and now they know it for sure.”

The Second Amendment Foundation ([www.saf.org](http://www.saf.org)) is the nation's oldest and largest tax-exempt education, research, publishing and legal action group focusing on the Constitutional right and heritage to privately own and possess firearms. Founded in 1974, The Foundation has grown to more than 650,000 members and supporters and conducts many programs designed to better inform the public about the consequences of gun control. In addition to the landmark McDonald v. Chicago Supreme Court Case, SAF has previously funded successful firearms-related suits against the cities of Los Angeles; New Haven, CT; New Orleans; Chicago and San Francisco on behalf of American gun owners, a lawsuit against the cities suing gun makers and numerous amicus briefs holding the Second Amendment as an individual right.

**-END-**

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# APPENDIX C-13

7/1/08 Seattle Post-Intelligencer B1  
2008 WLNK 12388755

Seattle Post-Intelligencer (WA)  
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July 1, 2008

Section: News

AG OPINION ASKED ON GUN BANS  
SIX STATE LEGISLATORS URGE MCKENNA TO WEIGH IN ON SEATTLE, OTHER CITIES' RULES

CHRIS MCGANN P-I Capitol correspondent

OLYMPIA

A U.S. Supreme Court decision on a Washington, D.C., gun ban combined with Seattle's attempt to restrict guns on city property has sparked a legislative discussion about an issue Washington Democrats have consistently avoided.

On Monday, six Democrats from rural state legislative districts called on Attorney General Rob McKenna to issue an opinion on a city's authority to ban people who legally possess firearms from city property and facilities.

"The statement from us is that our districts are just a totally different culture, and it's a big part of our culture, people hunt and they carry their gun rights on their sleeve," said House Majority Leader Lynn Kessler, D-Hoquiam. "We represent people who are adamant about the Second Amendment of our Constitution and we try to represent them."

That's a stark contrast to urban Democrats who have for years been frustrated that so-called common sense gun control has been stymied despite the party's majority control in the Legislature.

"We just have a split on that," Kessler said. "I don't think it's contentious, it's just the way it is."

The request follows Friday's Supreme Court ruling that struck down the District of Columbia's ban on handguns, and Seattle Mayor Greg Nickels' recent executive order to prohibit the possession of weapons, including firearms, on city property.

Rep. Kevin Van De Wege, D-Sequim, represents the city of Montesano, which recently considered a similar ban.

"I'd like to know whether cities like Seattle can set aside the Bill of Rights when you walk onto city property," Van De Wege said.

"Public safety is important to us all, but it seems to me an outright ban infringes on the right of citizens to legally carry

a gun."

"There are a lot of questions, but I would also like to know if state laws are being preempted by Seattle's mayor."

McKenna, who received a similar request from Republican lawmakers, says his office will provide a through analysis to lawmakers.

But he added in a statement that "while attorney general's opinions have historically been given 'great respect' and 'great weight' by the courts, they are not binding in any way. A final decision on the constitutionality of this ordinance needs to be rendered in the courts."

While Democrats generally support gun control, opposition from rural and swing district lawmakers largely quieted the legislative debate on the subject in Olympia.

Kessler said Democrats have avoided "hot button issues" that could fracture the caucus.

"Our hearts don't all beat as one, our districts aren't all the same and issues aren't all the same," she said. "I think it has kept us more cohesive as a result of staying away from some of these hot-button issues that really are district issues, not Democratic issues."

For example after a 2006 rampage on Capitol Hill in which a man fatally shot six people at a house party, the Legislature declined to bring up new gun control legislation, despite lobbying from Seattle Police Chief Gil Kerlikowske.

"There aren't enough votes in our caucus to get any kind of gun control bills out," Kessler said.

But the high court ruling and Seattle's continued push for gun control has apparently forced the issue to the surface.

Kessler, Van De Wege, Sen. Brian Hatfield, D-Raymond, Rep. Dean Takko, D-Longview, Rep. Brian Blake, D-Aberdeen, and Rep. Chris Hurst, D-Enumclaw, signed the letter to the attorney general.

They want to know if Nickels' executive order is pre-empted by federal or state law as well as the factors that would allow Seattle to implement policies prohibiting the possession of firearms on city property.

They also want to know, other than the exceptions provided under current law, under what conditions a city department would have the constitutional and/or statutory authority to prohibit a person from possessing a firearm on city property.

Nickels has directed city departments to come up with rules that would effectively prohibit guns on all city property, except those carried by law enforcement officers.

The high court's recent ruling in the D.C. gun case does not jeopardize that plan, said Regina LaBelle, counsel to the mayor.

In fact, the ruling affirmed that "The Second Amendment right is not unlimited, is not a right to keep and carry any weapon whatsoever, in any way whatsoever and for any purpose," LaBelle said.

Washington is a "shall issue" state, considered by many to have among the most lenient gun laws in the U.S. Almost all nonfelons have a right to carry a gun with a license, as long as they are over the age of 21.



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--- INDEX REFERENCES ---

COMPANY: TAKARA CO LTD; AG; GEA GROUP AG; KESSLER AND CO INC; OLYMPIA SAS; OLYMPIA

NEWS SUBJECT: (Legal (1LE33); Government Litigation (1GO18); Economics & Trade (1EC26); Government (1GO80); Local Government (1LO75); Judicial (1JU36))

REGION: (District of Columbia (1DI60); North America (1NO39); Washington (1WA44); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (AG; CONSTITUTION; DEMOCRATS; HOUSE MAJORITY LEADER LYNN KESSLER; KESSLER; LEGISLATURE; OLYMPIA; OPINION; SEATTLE POLICE CHIEF GIL; SUPREME COURT; US SUPREME COURT) (Brian Blake; Brian Hatfield; Chris Hurst; Chris McGann; De Wege; Dean Takko; Greg Nickels; Kevin Van; LaBelle; McKenna; Nickels; Regina LaBelle; Rob McKenna; Van)

KEYWORDS: STATE WEAPON COURT RULING

EDITION: Final

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# APPENDIX C-14

10/16/08 Seattle Times B1  
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October 16, 2008

Section: Local News

McKenna: Nickels can't issue gun ban

Sharon Pian Chan  
Seattle Times staff reporter

Seattle Mayor Greg Nickels does not have the authority to prohibit guns on public property, says State Attorney General Rob McKenna.

McKenna's opinion, which had been requested by state legislators, is nonbinding, so the city can proceed with its gun prohibition on public property. But historically, such opinions have been given great weight in court, according to the Attorney General's Office.

Washington state law "pre-empts a city's authority to enact local laws that prohibit possession of firearms on city property or in city-owned facilities," McKenna wrote with Deputy Solicitor General William Collins in the opinion issued Monday. Nickels said the ban is needed for public safety.

"While we appreciate the Attorney General's opinion, we have a moral responsibility to pursue common-sense gun laws," Nickels said in a statement.

"We cannot wait for another incident, or another victim. Our communities face real consequences if our state fails to act and I am hopeful that we will get further clarity on this issue. The simple fact is our public buildings, events, parks and community centers are safer without guns."

In May, a man who had a concealed-weapons permit fired a gun at Seattle Center's Northwest Folklife festival and wounded three other people.

Two weeks later Nickels issued an executive order directing city departments to come up with a plan to make city facilities — including buildings, parks and community centers — gun free. He said the city would post signs about the ban on city property, and would charge people who violated it with trespassing.

The Mayor's Office is now drafting an administrative rule and plans to hold a public hearing.

Many questioned whether the city had the authority to restrict firearms. In Washington state, cities cannot go beyond

state restrictions on firearms. State legislators led by Sen. Bob Morton, R-Kettle Falls, and Rep. Kevin Van De Wege, D-Sequim, requested a legal opinion from McKenna's office.

The city has suggested that a state Supreme Court ruling permitting the city of Sequim to regulate firearms at a gun show in a city convention center allowed Seattle to make similar restrictions.

After reviewing the Sequim case, which was filed by Pacific Northwest Shooting Park Association, McKenna wrote that in that instance the city was acting as a private business owner.

Under Mayor Nickels' prohibition however, the city would not be acting as a private business owner because large parts of city property are generally open to the public, McKenna wrote.

Two organizations, The Second Amendment Foundation and the Citizens Committee for the Right to Keep and Bear Arms, have notified Nickels they intend to mount a legal challenge to his order.

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--- INDEX REFERENCES ---

NEWS SUBJECT: (Gun Rights & Regulations (1GU97); Social Issues (1SO05); Legal (1LE33); Government Litigation (1GO18); Government (1GO80); Legislation (1LE97); Local Government (1LO75); Judicial (1JU36))

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OTHER INDEXING: (AMENDMENT FOUNDATION; CITIZENS COMMITTEE; PACIFIC NORTHWEST SHOOTING PARK ASSOCIATION; SEATTLE CENTER; STATE ATTORNEY; SUPREME COURT) (Bear Arms; Bob Morton; De Wege; Greg Nickels; Kevin Van; McKenna; Nickels; Rob McKenna; Sharon Pian Chan; William Collins)

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